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1 UNITED STATES OF AMERICA
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 371 (RA)

5 JOHN GALANIS, et al.,

6 Defendants.

7 -----x

8 New York, N.Y.
9 June 26, 2018
11:00 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13
14 APPEARANCES

15 ROBERT KHUZAMI,
Acting United States Attorney for the
16 Southern District of New York
17 BY: BRENDAN F. QUIGLEY,
REBECCA G. MERMELSTEIN,
18 NEGAR TEKEEI,
Assistant United States Attorneys

19 PELUSO & TOUGER
Attorneys for Defendant John Galanis
20 BY: DAVID TOUGER

21 BOIES, SCHILLER & FLEXNER LLP (NYC)
Attorneys for Defendant Devon Archer
22 BY: MATTHEW LANE SCHWARTZ
LAURA HARRIS
23 CRAIG WENNER

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Appearances (Cont'd)

PAULA J. NOTARI

Attorney for Defendant Bevan Cooney

- and -

O'NEILL and HASSEN

Attorneys for Defendant Bevan Cooney

BY: ABRAHAM JABIR ABEGAZ-HASSEN

Also present: Kendall Jackson, Paralegal

Ellie Sheinwald, Paralegal

Eric Wissman, Paralegal

Special Agent Shannon Bienick, FBI

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(Trial resumes)

(In open court; jury not present)

THE COURT: Good morning, everyone. You may be seated. Are we waiting for anyone? Is Mr. Cooney going to be here? Do you want us to wait for Mr. Cooney?

MS. NOTARI: No.

THE COURT: And Mr. Quigley?

MS. MERMELSTEIN: No.

THE COURT: Before we get to the issue of whether the door to Gerova has been opened, I want to ask that once we give this case to the jury and the verdict has been reached, I want to hear from the government and Mr. Touger whether Mr. Touger should be sanctioned personally for his flagrant violation of my order with respect to Code Rebel. Honestly, I don't know what you were thinking about. So we can save that for another day. That is the first thing.

Second, I have obviously read your letters and the cases. Do you want to be heard further?

MR. TOUGER: I just want to show you that my, why I thought I could say what I said in a similar --

THE COURT: I read the cases you submitted.

MR. TOUGER: I want to say what I said in the Roseman summation, which is what I think is tantamount to what I said in this one and Judge Kaplan didn't say I opened the door there? Remember in that case the only issue at summation --

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1 THE COURT: That was a proffer agreement. Here I
2 could not have been clearer. I could not have possibly been
3 clearer, and you intentionally misled this jury.

4 MR. TOUGER: No, your Honor.

5 THE COURT: Intentionally you led them to have a
6 misleading impression of what the facts are, and I've been so
7 lenient in saying that you had not previously opened the door,
8 and I warned you time and time again.

9 I explicitly said what was going to happen if you made
10 the explicit argument on summation, and you chose to do it.
11 You didn't bring your cases to me. You didn't ask to see me
12 ex-parte. You didn't ask to talk about this. You
13 intentionally tried to mislead this jury, and they are now left
14 with a misleading impression.

15 MR. TOUGER: I don't think I did that. In all
16 honesty, I don't think I did that. What I said was in both the
17 opportunities, in both the passages that the government quotes,
18 I had done a whole list of people who were lied to and I said,
19 yes, I said at the end the evidence shows he lied to everyone.
20 Afterwards I said something specifically about John Galanis. I
21 never said he lied to John Galanis. I never said he duped John
22 Galanis. I never said that, your Honor.

23 THE COURT: Does the government want to be heard? We
24 both have the transcript, obviously.

25 MS. MERMELSTEIN: Yes. I don't think I have a lot to

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1 add. I think it is clear that a reliance on the triggering of
2 a proffer agreement language is just completely irrelevant here
3 and that, as your Honor has said, the court could not have been
4 more clearer, you were giving the defense a lot of latitude in
5 questioning of witnesses, but if the door was opened, there was
6 going to be a consequence.

7 I think there are many more citations from the record.
8 I think your Honor knows what was said in closings. I am not
9 sure there is any point in going through them. Mr. Touger made
10 a strategic decision here to play chicken and do something he
11 knew was inappropriate, not to ask for permission, which he
12 wouldn't have been given, but to take the chance that he would
13 get away with it and there would be no consequence. That was a
14 strategic decision that he made. It was clearly -- I think if
15 the court allowed it in, in retrospect, it would have been a
16 wrong decision.

17 He made that decision. The jury cannot be allowed to
18 think that sort of John Galanis had no reason to think that
19 Jason Galanis was up to no good. That is so preposterous on
20 the facts that actually existed as everyone knows them to be.

21 MR. TOUGER: I want to be clear that I did not make
22 this decision in an effort to -- I made the decision based on
23 the summation I gave in another trial in this courthouse.
24 There was no gamesmanship on my part involved, and --

25 THE COURT: You came armed with case cites. You knew

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1 this was going to be an issue as soon as you sat down.

2 MR. TOUGER: That letter was in my file since the
3 trial began. That letter was in there waiting to be used since
4 the trial began because I know the government would say it, and
5 as they said throughout the case, I opened the door. I had
6 that letter with me the whole trial.

7 THE COURT: I don't think you remember citing those --

8 (Multiple voices)

9 THE COURT: I agree with the government. The cases
10 cited by you are wholly inapposite to the present situation.
11 In each of those cases, the issue before the court was whether
12 defense counsel had triggered the waiver provision of a proffer
13 agreement with the government by making a factual assertion.
14 The Rosemond case, 841 F.3d at 109, 108-109; United States
15 versus Roberts, 660 F.3d at 157-58; United States versus
16 Oluwanisola, 605 F.3d at 131-33; and United States versus
17 Barrow, 400 F.3d at 115-23.

18 Mr. Touger's obviously correct that in those cases the
19 Second Circuit found that a factual assertion that triggers the
20 waiver provision of a proffer agreement does not result when a
21 defendant merely attempts to demonstrate why the facts put in
22 evidence by the prosecution are insufficient and challenges the
23 sufficiency of the government proof on elements such as
24 knowledge, intent, without triggering the factual assertions.
25 Rosemond.

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1 The basis of keeping out evidence of keeping out
2 Gerova has nothing to do with 410's prohibition of introduction
3 of statements made during the course of plea negotiations or
4 the government's ability to introduce evidence pursuant to the
5 waiver provision of a proffer agreement. It is of no
6 consequence Mr. Touger couched his argument what the evidence
7 adduced at trial proves.

8 Indeed, the only reason the purported summary of the
9 evidence was factual accurate was I explicitly kept out the
10 most probative direct evidence that John Galanis was fully
11 aware that Jason Galanis has a history of committing fraud and
12 was in no way a legitimate businessperson. That ruling was
13 based in part on representations Mr. Touger made that he would
14 not advance the precise argument that he made in summation.
15 Although evidence of Jason Galanis' guilty plea in Gerova was
16 plainly admissible from the start pursuant to Rule 404 (b), I
17 initially excluded it on Rule 403 grounds at a time when Gary
18 Hirst was still a defendant in this case, and unlike John
19 Galanis, was convicted in Gerova following a jury trial and was
20 appealing his conviction.

21 At that time, however, I explicitly specified that
22 there were likely arguments the defendants could make that
23 would open the door to evidence of their involvement in Gerova,
24 and that is from the transcript of 8-13, at 26, lines 9 through
25 15. At the final pretrial conference on May 16th, after

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1 receiving supplemental submissions from the parties, I refused
2 to alter my previous ruling that I would not admit John
3 Galanis' guilty plea in Gerova. I specified, however, the
4 particular ways in which Mr. Touger could open the door to such
5 evidence; namely, by arguing that, "John Galanis didn't know
6 that Jason Galanis had a history of engaging in fraudulent
7 activity or that John Galanis was duped by Jason in the context
8 of this conspiracy." That is the May 16th transcript, Page 9,
9 Line 7 through 10.

10 After saying he would not defend this case on the
11 basis that John Galanis was just following the instructions of
12 Jason Galanis and trusted him to the nth degree, Mr. Touger
13 expressed his agreement with my assessment of which argument
14 would open the door, saying, "I would agree with your Honor."
15 That's at Page 99, lines 1 through 11.

16 On June 14th, in the middle of trial, the government
17 again attempted to introduce evidence of Gerova on the basis
18 Mr. Touger had opened the door by virtue of his
19 cross-examination of certain government witnesses. I denied
20 that motion, but reiterate to Mr. Touger that he would open the
21 door if he made -- and I am now quoting -- an explicit argument
22 that John Galanis was unaware of Jason Galanis' history of
23 fraud or that he was duped by Jason Galanis in the context of
24 this conspiracy. Transcript of June 18th, Page 2457, lines 18
25 to 21.

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1 Moreover, I specifically cautioned Mr. Touger that he
2 could still open the door during summations, and if he did, I
3 would not hesitate to permit the government to introduce
4 evidence of John Galanis' guilty plea in Gerova, and I cited
5 the Alcantara case, 674 Federal Appendix 39, 24-34 at that
6 time. That is precisely what happened yesterday, and perhaps
7 the most egregious example of Mr. Touger's intentionally
8 attempting to mislead the jury, and I think there are many, and
9 thus opening the Gerova door, he argued the following to the
10 jury:

11 The evidence demonstrates Jason Galanis was able to
12 fool each and every person in this case, get each and every one
13 at some time to do what he wanted without letting them know the
14 real reason for what really happened. Jason fooled two of the
15 largest successful law firms. He fooled Mr. Raines. He fooled
16 the most respected accounting firms in the world that all the
17 deals were on the up and up. He fooled the marketing. He
18 fooled his own cronies.

19 The evidence clearly shows, and the prosecution has
20 not produced any evidence to the contrary, this proves the fact
21 that Jason could fool anyone. Through it all, the prosecution
22 has produced no evidence that shows that John Galanis had any
23 idea or involvement with what his son was doing, and he, John
24 Galanis, was still held in high regard to the end. That is the
25 transcript of yesterday, 3764.

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1 To be clear, Mr. Touger was not precluded from arguing
2 that John Galanis was not involved in the fraud, that the
3 transaction itself was not fraudulent or even that John Galanis
4 lacked the requisite knowledge or intent to be convicted, but
5 in order to avoid opening the door to Gerova, he was not
6 allowed to argue that John Galanis lacked the requisite
7 knowledge or intent because he was duped by Jason Galanis.

8 The government now seeks to introduce portions of John
9 Galanis' plea and sentencing allocutions from Gerova. In
10 entering his guilty plea, John Galanis stated the following:

11 I, John Galanis, along with others, conspired to
12 commit securities fraud in or about 2009 to in or about 2011,
13 in that I and others openly managed brokerage accounts of an
14 individual and effected the sale of Gerova stock and received
15 and concealed proceeds derived therefrom, knowing that this
16 activity was designed to conceal from the investing public the
17 true ownership and control of that Gerova stock.

18 Then at sentencing he stated most of my involvement in
19 the Gerova matter started when Jason came to me and asked me to
20 sell the shares on an arrangement he had made with an
21 investment adviser. Jason explained the deal would be the
22 investment adviser would buy shares which would save him and
23 Gerova. I am going to permit the government to introduce this
24 evidence of John Galanis' guilty plea at sentencing proceeding.

25 Although Rule 404 (b) bars the introduction of other

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1 act evidence to prove that the defendant has a propensity to
2 commit the offenses charged, it allows admission of such
3 evidence for another purpose, such as motive, opportunity,
4 plan, preparation, absence of mistake or lack of accident.

5 The Second Circuit has adopted an inclusionary
6 approach to Rule 404 (b) under which all other act evidence is
7 generally admissible unless it serves the sole purpose of
8 showing a defendant's bad character. See the Siddiqui case,
9 699 F.3d 702. To determine admissible under 404 (b), the court
10 should consider whether the evidence is offered for a proper
11 purpose. The evidence is relevant to a disputed issue, and the
12 probative value of the evidence is substantially outweighed by
13 its prejudicial effect. See the Curley case, 639 F.3d at
14 56-57.

15 Evidence of John Galanis' guilty plea in Gerova is not
16 barred by 404 (b). It is not being offered as propensity
17 evidence, but rather as probative of John Galanis' knowledge
18 and intent in this case. Indeed, counsel for John Galanis
19 argued at length yesterday that he was fooled by Jason Galanis
20 in the context of a WLCC scheme and lacked knowledge as to the
21 fraudulent aspects of the bond offerings, that John Galanis had
22 previously pled guilty to committing securities fraud with
23 Jason Galanis is, thus, exceptionally probative of John
24 Galanis' knowledge and intent.

25 Moreover, this evidence does not run afoul of Rule

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1 403. It is probative evidence that will not result in unfair
2 prejudice to John Galanis. In fact, in light of the
3 affirmative arguments amassed by Mr. Touger, it is the
4 government that will be unfairly prejudiced if the jury is left
5 with the false impression that John Galanis was unaware of
6 Jason Galanis' mentioned fraud.

7 As I detailed, defense counsel for John Galanis was
8 put on notice on several occasions that were he to advance the
9 very argument he made including during his summation, the
10 Gerova evidence would be submitted, but he nonetheless
11 proceeded to intentionally and fragrantly run afoul of my
12 numerous previous warnings opting strategically not to raise
13 this issue with me before summation, ex-parte or otherwise, due
14 to his purported misplaced reliance an inapposite case law.

15 Given these circumstances, the jury cannot be left
16 with a wholly inaccurate impression that resulted from this
17 argument. I will, of course, offer a robust limiting
18 instruction as to both Mr. Archer and Mr. Cooney and will also
19 need to add 404 (b) instruction to the jury charge.

20 When the government introduces this evidence, here is
21 what I propose, drawing on the government's proposed 404 (b)
22 charge and the limiting instructions I have given previously
23 with respect to Jason Galanis' arrest in Gerova. The
24 government has offered evidence tending to show that on another
25 occasion, John Galanis engaged in conduct similar to the

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1 charges in the indictment. In that connection, let me remind
2 you that John Galanis is not on trial for committing acts not
3 alleged in the indictment.

4 Accordingly, you may not consider this evidence of
5 similar acts as a substitute for proof that John Galanis
6 committed the crimes charged, nor may you consider this
7 evidence as proof that John Galanis has a criminal personality
8 or bad character. The evidence of other similar acts was
9 admitted for a much more limited purpose, and you may consider
10 it only for that limited purpose.

11 If you determine that John Galanis committed the acts
12 charged in the indictment and the similar acts as well, then
13 you may, but need not draw an inference in doing the acts
14 charged in the indictment, John Galanis acted knowingly and
15 intentionally and not because of some mistake, accident or
16 other innocent reasons. Evidence of similar acts may not be
17 considered by you for any other purpose.

18 Specifically, you may not use this evidence to
19 conclude that because John Galanis committed the other act or
20 acts, he must have committed the acts charged in the
21 indictment. Then I will add, and Mr. Schwartz will note, I
22 will hear you out on this, I will add it is also important for
23 you to know John Galanis' guilty plea was to charges stemming
24 from the investigation that resulted in John Galanis' arrest in
25 September of 2015 which you have already heard about.

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1 I reiterate to you now that the conduct for which
2 Jason Galanis was arrested and John Galanis pled guilty was
3 entirely unrelated to this case. I further instruct you that
4 Mr. Archer and Mr. Cooney were not subjects of that
5 investigation and there is no evidence that either of them knew
6 about Jason or John Galanis' fraudulent conduct until after
7 Jason Galanis was arrested in September of 2015. You are not
8 to consider this evidence in any way against Mr. Archer or Mr.
9 Cooney.

10 MS. NOTARI: Your Honor, my concern is not only the
11 fact that there is the phone call to Francisco Martin about the
12 arrest of Jason Galanis regarding Geroval, but that the
13 government's, you know, not suggesting anything from the
14 evidence that after the arrest of Jason Galanis, that that
15 should be indicative of anything, providing I don't go that
16 direction with my argument. Hopefully --

17 THE COURT: Can you clarify that?

18 MS. NOTARI: In other words, they can't argue any
19 post-evidence of Jason Galanis' arrest that Mr. Cooney should
20 have known or this is some kind of conscious avoidance because
21 now more than ever this is right in front of the jury.

22 THE COURT: It was in front of the jury before with
23 respect to Jason Galanis' arrest. The only additional fact
24 with respect to your client was John Galanis was part of it.

25 Has there been any evidence of contact between your

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1 client and John Galanis?

2 MS. NOTARI: No, no.

3 THE COURT: I can understand the prejudice if this
4 related to someone that he was close to or in contact with with
5 Archer or Cooney, but instead this really just goes to John
6 Galanis, and I think that everyone has essentially acknowledged
7 they had no connection to one another, correct?

8 MR. SCHWARTZ: John Galanis and Mr. Archer and Cooney?

9 THE COURT: Yes.

10 MR. SCHWARTZ: That is not in dispute.

11 THE COURT: Okay.

12 MR. SCHWARTZ: So I have a number of thoughts.

13 THE COURT: Sure.

14 MR. SCHWARTZ: I may have missed it, but is it your
15 Honor's intention to allow the government to admit that
16 evidence that they suggested in their letter?

17 THE COURT: Yes.

18 MR. SCHWARTZ: You would do it in the way they
19 suggested, in other words, that would be introduced now?

20 THE COURT: Correct.

21 MR. SCHWARTZ: And we would have supplemental argument
22 limited or however you do it by time or by subject matter with
23 Mr. Touger, or I guess the government first and Mr. Touger?

24 THE COURT: I was going to let them do that so that
25 you could say what you wanted to say. I wanted it before your

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1 summation and Mr. Cooney's summation, but I am happy to hear
2 you out.

3 MR. SCHWARTZ: It is like a big stink bomb right
4 before I speak. I understand we are where we are, and I am not
5 weighing in on what happened, but it is prejudicial to Mr.
6 Archer for all the reasons I said before.

7 I guess if I had a logistical proposal, it would be
8 this, and I am not sure there is any exact precedent for this.
9 It is sometimes the case, for example, in trigger lock cases
10 where an issue is submitted to the jury, and then after they
11 come back --

12 THE COURT: There is no way to do that because the
13 whole issue with respect to -- there is no way to bifurcate
14 this.

15 MR. SCHWARTZ: What I would suggest, your Honor, is I
16 could close, Ms. Notari could close, the government could
17 rebut. The jury could be instructed to deliberate solely with
18 respect to Mr. Archer and Mr. Cooney, and after they return a
19 verdict, assuming they return a verdict, they could receive
20 this evidence, there could be supplemental argument, and that
21 way there wouldn't be a taint with respect to the Gerova
22 arrest.

23 THE COURT: I am not going to do that. I will if you
24 wanted me to wait and have the government do it after your
25 summations, I am happy to do that or before. I also want to be

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1 clear that the government's supplemental summation has to be
2 really short and cannot attack Mr. Touger.

3 I don't want a suggestion that there was an attempt to
4 mislead the jury, but I am open to the timing, but I am not
5 going to otherwise follow that recommendation.

6 MR. SCHWARTZ: I would like to put distance between
7 this issue and my remarks. I'll say out loud, but I know what
8 your Honor's answer is going to be. I propose you do this now,
9 and I get to sum up in the morning so that I don't have to go
10 right on the heels of this new and highly prejudicial issue.

11 THE COURT: But I don't think it taints your client in
12 any way. I am giving this specific instruction that is almost,
13 almost helps him in a way, no?

14 MR. SCHWARTZ: Look, I appreciate that, I appreciate
15 the instruction. I think that is very robust, and we had
16 proposed something way back when that was a little bit more
17 definitive, but I can't really take issue with the language of
18 your Honor's instruction.

19 Nonetheless, the suggestion that -- not the
20 suggestion -- the proof that John Galanis and Jason Galanis
21 previously committed securities fraud together during the time
22 period of this case, and combined with the arguments that the
23 government made yesterday and that I anticipate they'll make in
24 rebuttal about the way the various defendants reacted when
25 Jason Galanis was arrested, I think are deeply prejudicial.

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1 MS. NOTARI: At this point, the only evidence they
2 have against Mr. Cooney -- absolutely CNB is ridiculous, okay?
3 It is ridiculous. And you're going to see how it is
4 ridiculous, but the whole evidence of 1920 Bel Air, their own
5 cooperator fully knew about 1920 Bel Air.

6 THE COURT: Just focus on this --

7 (Multiple voices)

8 MS. NOTARI: About Francisco Martin is that he came --
9 I don't think there was any mention of him yesterday except for
10 the phone call, and that is basically their evidence against
11 Mr. Cooney is this phone call that now is like going to be
12 blown up into something more, and it is --

13 THE COURT: I don't think it is being blown up.

14 Look, the jury knows there was a fraud, they know
15 Jason Galanis who both of your clients knew well was in on it.
16 The fact that his father, who they didn't have connections to,
17 was also in on this previous fraud, I don't think it hurts your
18 clients in particular because I am giving this very clear
19 instruction that not only can this evidence not be considered
20 against either of them, but I am instructing them factually,
21 with the government's consent, that Mr. Archer and Mr. Cooney
22 were not subjects of that investigation and there is no
23 evidence that either of them knew about Jason or John Galanis'
24 fraudulent conduct until after Jason Galanis was arrested in
25 September 2015.

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1 MS. NOTARI: The evidence against my client at this
2 point is that Jason Galanis and Bevan Cooney are childhood best
3 friends, they are best friends. Every witness who had nothing
4 to say about Mr. Cooney's knowledge testified that they are
5 best friends. They blew up on a screen they're childhood best
6 friends and now we know about this arrest. Well, what kind of
7 best friend doesn't know about your father's prior conviction?

8 THE COURT: But the best friend's arrest was already
9 in evidence a while back. So the fact his father was in on it,
10 I am not sure how that hurts your client.

11 MS. NOTARI: Because it is common sense.

12 With all respect to your Honor, I know you're trying,
13 and this is something that we're all going on the fly here, but
14 literally juries are smart, and this is common sense. That
15 would be the first thing that I would talk about if I were in
16 the jury room, was you know what, there is none of this
17 evidence, but we know they're best friends and they have this
18 very close childhood relationship, and, of course, Mr. Cooney
19 knew that John Galanis was a convicted fraudster with his son,
20 and that is the bottom line. That is all they need. They're
21 being allowed to convict Mr. Cooney based on that evidence, and
22 it is just so prejudicial.

23 THE COURT: I honestly don't think it is prejudicial.

24 Go ahead.

25 MS. MERMELSTEIN: I completely agree. I, frankly,

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1 having made these arguments, there is no doubt, maybe I am
2 wrong, Mr. Schwartz and Ms. Notari will get up and say to the
3 jury look, there was a fraud here and there were people here in
4 it and people who weren't in it. John Galanis was sort of
5 doing other frauds with Jason Galanis, and you heard him.

6 Look, we consented to the court's instructions with
7 respect to the no evidence language, but it is very different
8 for the court to give that instruction than for a lawyer to be
9 able to argue there was no evidence in the trial. I think it
10 is a windfall to them. I don't think it is necessary to be
11 clear for it to be given again.

12 There is no suggestion they were, and I think it
13 oversells the situation. They're definitely going to use this
14 as a way to separate themselves from the fraud, and that is
15 fine. I am not suggesting they shouldn't be allowed to do
16 that. The notion it is prejudicial to them when the jury
17 already knows Jason Galanis was arrested, to learn that John
18 Galanis was in on that is just silly.

19 With respect to the best way to proceed, I think it
20 should be handled now, it shouldn't wait until the end, and I
21 think there is no reason that -- I agree with your Honor, the
22 summation is about this new piece of evidence and nothing else,
23 it will be short. Mr. Touger will be short. We'll take a
24 10-minute break and Mr. Schwartz can start. I want to make
25 sure I was understanding what your Honor said about attack on

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1 Mr. Touger. I am not going to suggest that sort of he violated
2 the court's order or that he did something nefarious.

3 THE COURT: You --

4 (Multiple voices)

5 MS. MERMELSTEIN: What he said, right, he made an
6 argument to the jury, and that argument is wrong.

7 THE COURT: Yes, yes absolutely. I just didn't
8 want --

9 MS. MERMELSTEIN: We want --

10 (Multiple voices)

11 THE COURT: I was just going to tell the jury that the
12 evidentiary record is being briefly reopened. I wasn't going
13 to say why.

14 MS. MERMELSTEIN: Okay.

15 THE COURT: I didn't want to place personal blame.

16 This is essentially what happened in Alcantara, and so
17 it was affirmed by the circuit, and so I think that is the best
18 way to go.

19 MS. MERMELSTEIN: Logistical, in terms of the
20 substance of what is going to come in, I know how your Honor
21 wanted to do that. I think that the plea and sentencing
22 transcripts are largely sort of -- they're helpful. He only
23 says it to Jason. There is no dispute it is Jason Galanis.

24 I think we are in a pretty different situation than we
25 were when Gary Hirst was in the trial about concerns about

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1 referencing the fact of arrest and conviction than we were when
2 there was a bigger case. I wanted to understand how your Honor
3 wanted to do it.

4 I assume there is not going to be need to call
5 witnesses to authenticate the transcripts from those things
6 themselves, although I will note I have communicated with the
7 court reporters for both of them, and they're both working
8 today, working on other trials and they're busy and they're
9 here if we need to do it.

10 MR. TOUGER: For the record, I would ask for an
11 adjournment to call Jason Galanis as a witness in the trial.

12 THE COURT: That request is denied. You knew full
13 well what was going to happen if you chose to make the
14 arguments you did. The evidentiary portion of this trial is
15 over. I also, frankly, don't quite understand this request
16 because this goes to his knowledge, intent previously. You
17 could have called him as a witness anyway in this case. His
18 knowledge and intent has always been an issue in dispute.

19 MR. TOUGER: Calling Mr. Jason Galanis has pluses and
20 minuses to it, and we made the strategic decision during the
21 trial that the minuses outweighed the pluses, but at this point
22 I don't think that is true any more, that Jason Galanis would
23 come here and say John Galanis had no knowledge of this
24 situation.

25 THE COURT: I don't think that that would be proper

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1 rebuttal to the plea unless you're literally saying that that
2 was not him that made those statements. I don't think it is
3 proper rebuttal anyway.

4 MS. MERMELSTEIN: I note for the record it may moot
5 this issue, your Honor is exactly right in any event. By
6 complete happenstance, I ran into Mr. Jason Galanis' lawyer
7 this morning, who has been following the trial out of
8 curiosity. I noted Mr. Touger indicated he would seek to call
9 Mr. Galanis, and his counsel indicated that Jason Galanis would
10 certainly not be willing to testify.

11 MR. TOUGER: That is exactly the opposite of what he
12 told me, Jason Galanis told me.

13 THE COURT: How recently was that?

14 MR. TOUGER: Excuse me?

15 THE COURT: When was that?

16 MR. TOUGER: I personally spoke to Jason Galanis
17 months ago.

18 THE COURT: It seems like right now his lawyer is
19 saying --

20 MR. TOUGER: He has been in communication with his
21 mother and other people.

22 THE COURT: In any event, you could have called him.
23 I don't think it is proper rebuttal. You knew exactly what was
24 going to happen if you did this, and you made a strategic
25 decision that this was in your client's interest.

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1 MR. TOUGER: That is the court's ruling, and I will
2 abide by it.

3 THE COURT: Okay.

4 MR. TOUGER: So if I am understanding you correctly,
5 what is going to happen is what is in the government's letter?

6 THE COURT: Yes. The question is do we need to call a
7 witness from the court reporter's office?

8 MR. TOUGER: No.

9 THE COURT: I don't think so. You said that is not an
10 issue.

11 MS. MERMELSTEIN: My question, it wasn't clear to me
12 in the way your Honor was describing what the --

13 THE COURT: What would you propose?

14 MS. MERMELSTEIN: The question is whether or not the
15 jury will understand the thing that Jason Galanis was arrested
16 for in 2015 is this thing because the conduct itself is in 2009
17 through to 2011, it is not clear it is the same thing and not
18 yet another Jason Galanis fraud.

19 I also think it is relevant to the arguments Mr.
20 Touger made that Mr. John Galanis was arrested at that same
21 time because one of the arguments that Mr. Touger advanced
22 yesterday was that sort of like no one else was talking to John
23 Galanis. Late in the game, that is among other reasons he is
24 arrested in the Gerova case.

25 So the stipulation that was previously proposed in

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1 light of the court's then ruling was not going to be allowed to
2 get into any fact of arrest or conviction. That is why we
3 pulled this language. I think that now, giving the lay of the
4 land, it is appropriate to, if nothing else, indicate that John
5 Galanis was arrested in September of 2015 for this conduct.

6 MR. TOUGER: Actually the evidence in this case is
7 slightly different than that. The evidence in the case was Mr.
8 Raines and Mr. Anderson continued to speak to Mr. Galanis past
9 the day he was arrested.

10 MS. MERMELSTEIN: Yes, some people did.

11 There has been a real focus on why was John Galanis
12 kept away from everybody else, and that is part of the story.
13 Mr. Touger is not wrong that some of the witnesses did not
14 immediately cut off Mr. Galanis. I also think it is confusing
15 to the jury. It leaves a weird question of were we talking
16 about the same thing or aren't we? Since we are, it makes
17 sense to make that clear.

18 THE COURT: What would you propose in terms of -- do
19 you want to jump in?

20 MR. SCHWARTZ: Is it important to the government's
21 argument it is the same?

22 MS. MERMELSTEIN: I think it is confusing. Because of
23 where we were then, the government did not elicit from
24 witnesses that the 2015 arrest related to the Gerova conduct.
25 You'll recall Francisco Martin said that --

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1 MR. SCHWARTZ: I agree with you entirely. This case
2 would have been entirely different.

3 MS. MERMELSTEIN: Sure. If you now put in they don't
4 know that the 2015 related to Geroval given the time of the
5 conduct, they're not going to have any reason to think that the
6 conduct which John Galanis admitted in Geroval was sort of the
7 arrest that was in 2015, and it leaves open the notion for the
8 jury they're being told for the first time additional bad
9 conduct by John Galanis, not the same bad conduct. No one is
10 arguing John Galanis is a good guy. I am not worried them
11 thinking that. I think it is confusing.

12 THE COURT: Let me know what you propose.

13 I what I had suggested saying, but I don't want to
14 testify to something that there is not consent to, or I don't
15 want to testify at all, obviously, but I don't want to say
16 something there isn't an agreement on.

17 I was going to say that the guilty plea was to charges
18 stemming from the investigation that resulted in Jason Galanis'
19 arrest in September 2015 which you have already heard about. I
20 reiterate to you now the conduct for which Jason Galanis was
21 arrested and John Galanis pled guilty was entirely unrelated to
22 this case. If that is not in evidence, I don't want to say it
23 unless there is consent.

24 MR. SCHWARTZ: Can I think about that for a minute?

25 I am taking this all in, and I think I probably will

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1 get to where Ms. Mermelstein is if I can have two minutes, as
2 we talk about other things to reflect on it.

3 THE COURT: Sure.

4 MR. SCHWARTZ: On a separate note, I do think your
5 Honor should say something to the jury about why this evidence
6 is coming in now. This is not like other instances where 404
7 (b) has been entirely excluded, so when it comes in, it is a
8 new thing. Here we have been dabbling around this issue
9 especially if you associate it with the September 2015 arrest.

10 MR. TOUGER: I have no problem if you say because of
11 the arguments I made.

12 THE COURT: Okay, then I will.

13 MR. SCHWARTZ: I agree with Ms. Mermelstein at a
14 minimum there should be a break between this portion and my
15 argument.

16 THE COURT: That is fair. I agree with you on that.
17 Back to how this is coming in --

18 MS. MERMELSTEIN: What your Honor has proposed, I
19 think to couple what your Honor has said, on July 20, 2016, in
20 connection with the entering of guilty plea, John Galanis said
21 the following. I am sorry. I am thinking on the fly, and I am
22 wondering if there is a more straightforward way to do to tell
23 the jury. We are fine with your Honor instructing the jury. I
24 think there won't be any dispute about the facts, right, that
25 between X date and Y date -- can I have one moment to think

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1 without doing it out loud?

2 THE COURT: Think about it and let me know. Why don't
3 we take a break for five minutes. Think about it and let me
4 know what you want me to say very specifically other than what
5 I -- well, I have already told you what I plan to say in terms
6 of my 404 (b) instruction. Tell me if that needs to be tweaked
7 at all.

8 MS. MERMELSTEIN: With respect to the 404 (b) --

9 THE COURT: The second paragraph with respect to the
10 evidence, we'll print you that paragraph for everybody.

11 (Recess)

12 THE COURT: What would you propose?

13 MS. MERMELSTEIN: We would propose that your Honor or
14 the government, by stipulation, tell the jury that on July 20th
15 of 2016, John Galanis pled guilty to conspiracy to commit
16 securities fraud in or about 2009 to 2011.

17 THE COURT: Is this language on consent?

18 MS. MERMELSTEIN: I ran it by Mr. Schwartz and Ms.
19 Notari, but I didn't run it by Mr. Touger, to whom it would be
20 most important. Then I think we can use the language from the
21 plea allocutions. It can't be disputed as being accurate, in
22 that -- let me start over.

23 I, John Galanis, along with Jason Galanis and others,
24 conspired to commit securities fraud in or about 2009 to in or
25 about 2011, in that I and others openly managed brokerage

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1 accounts of an individual and effected the sale of Gerova stock
2 and received and concealed proceeds derived therefrom, knowing
3 that this activity was designed to conceal from the investing
4 public the true ownership and control of that Gerova stock.

5 In essence, it is the first paragraph of the proposed
6 language from the plea, with the added notation it was made in
7 connection with his plea and that one of the others is Jason
8 Galanis. I think that is an easier and cleaner way to tell the
9 jury that information.

10 I think we are agnostic whether or not the jury should
11 be told this conduct was the conduct for which Jason Galanis
12 was arrested in 2015. I think the defense, at least Mr.
13 Schwartz was inclined to do that, and that is fine with us.

14 THE COURT: Mr. Touger, I understand you have an
15 objection to this coming in at all, but given my ruling, do you
16 have an objection to that language?

17 MR. TOUGER: The language in the letter?

18 THE COURT: Sorry?

19 MR. TOUGER: It is --

20 THE COURT: It is tweaked a little bit. You add the
21 name Jason to the plea transcript, where it was in the
22 sentencing transcript.

23 MS. MERMELSTEIN: It is cleaner to do it that way.
24 There is no dispute it was with Jason Galanis.

25 THE COURT: You could say to be accurate in connection

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1 with this case, but I am open to whatever you all --

2 MR. TOUGER: We should mimic the language that is in
3 the letter.

4 MS. MERMELSTEIN: The issue there is that the
5 sentence, he references Jason in the sentencing. It is not
6 apparent from that it is Jason Galanis. There is no dispute it
7 is Jason Galanis. The indictment only charges one Jason. It
8 is obviously Jason Galanis.

9 MR. TOUGER: If you have Jason Galanis, I have no
10 objection to that.

11 MS. MERMELSTEIN: Then you don't --

12 THE COURT: Fine.

13 MR. TOUGER: What was that?

14 MS. MERMELSTEIN: Do you want me to reread what we are
15 going to say?

16 MR. TOUGER: Yes.

17 MS. MERMELSTEIN: The government can read a
18 stipulation or your Honor, if people prefer, can instruct the
19 jury on July 20th, 2016, John Galanis pled guilty to
20 participating to conspiring with Jason Galanis and others to
21 commit securities fraud in or about 2009 to in or about 2011,
22 in that John Galanis and others openly managed brokerage
23 accounts of an individual and effected the sale of Gerova stock
24 and concealed and proceeds derived therefrom, knowing this
25 activity was designed to conceal from the investing public the

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1 true ownership and control of the Gerova stock.

2 It tweaks the first paragraph to make clear it was his
3 plea and it was Jason Galanis.

4 MR. TOUGER: That is fine.

5 THE COURT: That is fine. You should do it in light
6 of the consent of Mr. Touger on this point. I understand he is
7 not consenting generally.

8 In light of an argument Mr. Touger made yesterday, I
9 will say I am going to briefly allow the government to
10 supplement the evidentiary record. Then I am going to let you
11 read it, and then I was going to read the two paragraphs that I
12 handed out unless there is again an objection to the specific
13 language.

14 MS. MERMELSTEIN: One objection to the specific
15 language, I think in some ways -- well, I think the issue with
16 respect to the re-instruction about Archer and Cooney is that
17 the language is too broad. All your Honor is saying, and all
18 that would be accurate to say, is that they didn't, there is no
19 evidence that they knew of this particular fraudulent conduct
20 by Jason Galanis and John Galanis, right, the Gerova conduct.
21 There is, in fact, evidence they knew of other fraudulent
22 conduct by Jason Galanis, and I wouldn't want the jury to think
23 your Honor was telling them more than really is correct.

24 So we would propose that -- I don't think this
25 instruction is needed, but if it is going to be given, we

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1 propose it say, "I further instruct you Mr. Archer and Mr.
2 Cooney were not subject of that investigation and there is no
3 evidence that either of them knew about Jason and John Galanis'
4 fraudulent conduct in connection with that investigation or
5 Gerova until after Jason was arrested."

6 THE COURT: How about in connection with that matter?

7 MS. MERMELSTEIN: That is fine, your Honor.

8 THE COURT: So again I am just going to say, "In light
9 of an argument Mr. Touger made yesterday, I will briefly allow
10 the government to supplement the evidentiary record." You are
11 going to read what you're going to read, and then I will read
12 this instruction. Does anyone else want to be heard?

13 MR. TOUGER: Could I have a sidebar?

14 THE COURT: Yes.

15 (At sidebar)

16 MR. TOUGER: If you remember Mark McMillan testifying
17 during his testimony that there was an event that took place
18 that caused the separation of John and Jason. That is why
19 John -- (inaudible) -- in Dutchess County. I want to say about
20 that, I want to make sure it is okay with you that now you know
21 what that event was.

22 THE COURT: Yes, I think that is fine. It is
23 argument, so it is fine.

24 (In open court)

25 MR. SCHWARTZ: So most of the second paragraph is

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1 adapted from what your Honor has said before, but before the
2 jurors knew there was an arrest, but not that it was securities
3 fraud or that there was an investigation.

4 I think the last sentence just needs to be tweaked to
5 say that I further instruct you that Mr. Archer and Mr. Cooney
6 were not subjects of that investigation and there is no
7 evidence that either of them knew about Jason and John Galanis'
8 fraudulent conduct in that matter, or the investigation of it,
9 until after Jason Galanis was arrested in September of 2015.

10 MS. NOTARI: Your Honor, just for the record, I do
11 want to move for a mistrial. I think there is no coming back
12 from this prejudice. I don't think Mr. Cooney can have a fair
13 trial at this point. I do think that if this had been the case
14 in our pretrial hearing, we would have likely asked for
15 severance. I am moving for mistrial.

16 THE COURT: That motion is denied. For all the
17 reasons I said, I don't think your client is prejudiced, and
18 that motion is denied.

19 MR. SCHWARTZ: If we can just join for the record.
20 Thank you.

21 THE COURT: Yes.

22 MR. SCHWARTZ: Thank you.

23 THE COURT: Are we set up?

24 MS. MERMELSTEIN: I am sorry, your Honor. We were
25 doing too many things at once and I didn't hear what was being

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1 said.

2 (Off-the-record discussion)

3 MS. MERMELSTEIN: Your Honor, with respect to the
4 knowledge of the investigation, I think there is too much of a
5 windfall here being given to Mr. Archer and Mr. Cooney by
6 having the court direct that they didn't know something or they
7 have already been instructed.

8 I don't think we should give them a more comprehensive
9 instruction in part because I don't think it is, in fact, clear
10 they didn't know. I agree the government hasn't put forward
11 that evidence, but a lot of people knew this investigation was
12 going on because a lot of people had been spoken to. I think
13 it risks that your Honor's telling the jury something that
14 isn't necessarily factually correct, and I think it coming from
15 the court rather than from a lawyer saying well, there is no
16 evidence that they knew that, it gives it too much of an
17 imprimatur because the jury believes everything the court tells
18 it. It knows the arguments of counsel are just argument.

19 We agree to this struck previously. We are not
20 withdrawing that, but I don't think any further additional
21 instructions should be given.

22 THE COURT: Tell me why the investigation matters.

23 MR. SCHWARTZ: So previously all that was in evidence
24 was that there was an arrest in September 2015. There was no
25 indication of what it was. There was no indication that it was

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1 a securities fraud, that it involved numerous co-conspirators
2 or that there was an investigation which your Honor was
3 explicitly referencing here, and which this jury knows from
4 their common sense, having seen the kind of work that goes into
5 putting together a securities fraud and conspiracy
6 investigation, and so absent that instruction, it would be
7 absolutely reasonable for the jurors to infer, although they
8 may not have known Jason Galanis' criminal conduct, they knew
9 he was under investigation, right?

10 They have heard that starting in October 2015,
11 everyone knew this case was under investigation because
12 subpoenas started dropping and it wouldn't be hard for them to
13 assume everyone knew in that case subpoenas started dropping.

14 I have no idea what the government did with subpoenas,
15 but it is objectively true that there is no evidence in this
16 trial record and to my knowledge there is no evidence, period,
17 Mr. Archer was aware of any such investigation. He was totally
18 removed from those people, those players, those facts, and I
19 think that is fair.

20 If the government is going to get to put in this
21 evidence, which is prejudicial to Mr. Archer and Mr. Cooney,
22 then that has to be cauterized so that it is about John
23 Galanis. The statement to the jury, notwithstanding whatever
24 the government thinks they know from their other investigation,
25 there is no evidence that Mr. Archer and Mr. Cooney knew about

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1 the investigation or the conduct is an accurate statement.

2 I had fought before, if you recall, to say
3 affirmatively Mr. Archer and Mr. Cooney did not know, and the
4 government, even though they had no evidence that they knew,
5 didn't want to subscribe to that fact, and so we arrived at
6 this way of saying it. That is also a fair way to say it about
7 the investigation.

8 THE COURT: I'll just consider that whether to put in,
9 "Or the investigation of it." Otherwise, we are ready to
10 proceed. Then we'll take a break, right? So we'll just be
11 here for a minute or two, we'll take a break and then we'll
12 come back and hear your summation. We're going to check on the
13 jury.

14 MR. SCHWARTZ: Were we going to go over the other
15 outstanding elements of the charge?

16 THE COURT: I am happy to. Tell me what you need to
17 know.

18 MS. MERMELSTEIN: I am sorry to interrupt. I want to
19 make sure, because we have edited the proposed stipulation the
20 government will read on the fly here, I am saying what everyone
21 agrees I should say. Do you want me to say this is in
22 connection with the 2015 arrest?

23 MR. SCHWARTZ: The court will say that.

24 THE COURT: I will say that.

25 MS. MERMELSTEIN: I will say this.

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1 THE COURT: It is my understanding everyone consents
2 to my saying it was to charges stemming from the investigation
3 that resulted in Jason Galanis' arrest in September 2015 which
4 you already heard about.

5 MS. MERMELSTEIN: That is totally fine, your Honor.
6 Thank you.

7 THE COURT: All right. We'll see if the jury is here.
8 Why don't we start talking about the remaining issues on the
9 charge. If they're here, we'll bring them in at least for this
10 small portion, and we can talk about anything else you need to
11 know before your summation.

12 MR. TOUGER: We are going to do the -- (Inaudible).

13 THE COURT: Yes.

14 MR. SCHWARTZ: I didn't have anything specific. I
15 thought that was before this came up. I thought that was the
16 reason we were coming in early.

17 THE COURT: We were initially.

18 MR. SCHWARTZ: Events have overtaken us, I understand.

19 THE COURT: I can hand out new drafts of -- I was
20 going to circulate it initially at 12:00, but then we went on
21 to this. I am happy to circulate a new draft now. If there is
22 any issue, any language you want to rely on, I am happy to talk
23 about it specifically now. Otherwise, we can talk about it at
24 the end of the day.

25 MR. SCHWARTZ: There are parts of the charge. I don't

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1 think there was anything that we were discussing that I am
2 going to talk about, although I may talk about the conscious
3 avoidance. I don't know if the language has changed.

4 THE COURT: I don't think so.

5 MR. SCHWARTZ: Any information you have for us would
6 be helpful.

7 MS. TEKEEI: Your Honor, in case Mr. Schwartz intends
8 to rely on potential instructions related to the unanimity of
9 the government's theory, which we oppose, we would like to be
10 heard on that before he does that or before the court allows
11 for such an instruction.

12 MR. SCHWARTZ: I don't think we got anything new from
13 the court on that.

14 THE COURT: The conscious avoidance hasn't been
15 changed at all. To be clear, I will print out a redline
16 version. On unanimity I wasn't going to use a verdict form in
17 the way that you did, but I was going to make clear, and I will
18 get out the language with respect to unanimity, we'll print
19 that out now and I can read you what I was intending to
20 instruct the jury. Again if there is anything you wanted to
21 rely on for the purposes of your summation, we should talk
22 about it now.

23 MR. SCHWARTZ: I will take another look and talk about
24 reasonable doubt. I am sure it hasn't changed.

25 On this point, I will look at what your Honor had

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1 said. I was going to talk about factually what the government
2 has charged in this case and the two aspects of the securities
3 fraud, but I didn't have charging language and I wasn't
4 intending to put charging language in.

5 MS. TEKEEI: We disagree that factually it has been
6 charged in two separate theories, and that is what we wanted to
7 talk about before the court settled on any language that would
8 get to that. We don't think there is a basis in the case law
9 for such an instruction, and the case was not charged in that
10 way.

11 MR. SCHWARTZ: I am not going to argue the law. I am
12 going to simply put up the "to wit" language of the securities
13 fraud count and say this is really talking about two things,
14 two sets of victims, and all the things that I have been saying
15 without any reference to how they have to deliberate or
16 anything like that.

17 MS. NOTARI: Your Honor, my microphone is not working.
18 I will speak loudly. I just also, if the court is not inclined
19 to grant a mistrial, I just consulted with some others, and I
20 am moving for a severance. I just want the record to be clear.

21 THE COURT: That motion is denied.

22 MS. NOTARI: I see this is catastrophically
23 prejudicial.

24 THE COURT: I totally disagree, but your objection and
25 motion are preserved for appellate purposes.

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1 MR. QUIGLEY: Just one other housekeeping issue while
2 we are at it. I know Mr. Schwartz handed out Power Points in
3 his final witness yesterday. I want to make sure those were
4 collected and were not back in the jury room, which I don't
5 think would be appropriate.

6 THE COURT: I don't know. I will see. If they're
7 exhibits, we'll take them so we send back everything at once.

8 MR. QUIGLEY: Thank you.

9 THE COURT: Yes.

10 MS. TEKEEI: If we are waiting for the jury?

11 THE COURT: We are.

12 MS. TEKEEI: Your Honor, we read Mr. Schwartz's letter
13 that he filed yesterday. We read the cases. We think that
14 this is clearly the defendants' way of trying to get in a
15 multiple conspiracy charge, and we think that for the same
16 reasons that the court rejected their multiple conspiracy
17 language, it should reject the attempt to impose two separate
18 theories onto the government's indictment and charging
19 language.

20 The charging language in the indictment clearly
21 charges one scheme by a single theory, and they're trying to
22 cut that up, which I understand they want to do in argument,
23 and while that may be fine, we don't think that there is a
24 basis in the law to cut up the charging language in the
25 instructions.

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1 The Count 2 states that the defendants engaged in a
2 scheme to misappropriate the proceeds of several bond issuances
3 by the WLCC and also caused investor funds to be used to
4 purchase the bonds for which there was no secondary market,
5 through which such bonds could be redeemed without disclosure
6 to those investors of material facts, including the existence
7 of multiple conflicts of interest and which investments in some
8 cases --

9 THE COURT: Hold on. One second.

10 MS. TEKEEI: Sure.

11 (Pause)

12 THE COURT: You know what? I want to talk about this.
13 I want to hear you out on this. I wouldn't put it here anyway
14 at the end.

15 MS. TEKEEI: I will note what the court said
16 yesterday, which is that -- and this is transcript Page 3590 --
17 the court has already agreed that all of the misrepresentations
18 made in this case were clearly in furtherance of the same goal;
19 namely, to misappropriate the bond proceeds for the personal
20 use of the co-conspirators. There would have been no bond
21 proceeds to misappropriate had the investors not purchased
22 them, and that's why the defendants needed to control the
23 investment advisory firms with the pension fund clients to
24 purchase them.

25 The government has not proceeded under two separate

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1 theories. It has proceeded under the single scheme that is set
2 forth in Count 2 of the indictment. There are multiple aspects
3 to that single scheme and phases of that single scheme, but it
4 is not the case that the government has split up its theory.
5 The cases that counsel have cited, many of them to do with when
6 there are false statements and separate false statements that
7 are being put into -- or the charges relate to those separate
8 false statements.

9 If you look at Shaoul, which is one of the cases they
10 cite, the example instruction that the Second Circuit provided
11 in that case applied only when the indictment accused the
12 defendants of committing a crime in one of two different ways.
13 That is not what the indictment here even suggests. The
14 indictment here accuses the defendants of committing a single
15 over-arching scheme.

16 THE COURT: Let me get the indictment out.

17 MS. TEKEEI: Sure. We have a copy of it, too, your
18 Honor.

19 THE COURT: If you have it there, that would be great.

20 (Pause)

21 MR. SCHWARTZ: Of course, there is no dispute that the
22 indictment literally charges a single count. If it didn't, we
23 wouldn't be having this conversation. Ms. Tekeei just put the
24 emphasis on the wrong word. She put the emphasize on the "a
25 scheme" instead of the big "and" in the middle of it, that

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1 "and" separates two fundamentally different kinds of conduct.

2 One is the investment adviser conduct and the criminal
3 breaches of fiduciary duty, and the other is the theft of bond
4 proceeds. If the government wants an instruction that the jury
5 has to find that the defendants joined a scheme with both
6 purposes, that would be fine, but that is not their argument.

7 Their argument that one or the other is sufficient to
8 convict, that it is sufficient, for example, if a defendant
9 only knew and intended that these bonds would be stuck to the
10 clients of Atlantic and Hughes, in violation of those
11 investment advisers' fiduciary duties regardless of any
12 misappropriation.

13 If that is the way that they conceive of their
14 charges, then it runs -- as we discussed before, and I think as
15 your Honor appropriately found in crafting language that you
16 handed out -- it runs the very material risk that jurors could
17 convict without unanimity on what these defendants actually did
18 in terms of what scheme they joined. This is totally different
19 than the multiple conspiracies point. This goes to the
20 substantive securities fraud, not the conspiracy charge.

21 MS. TEKEEI: Your Honor, to cut it up that way is
22 simply incorrect and unfair. There was a single scheme. The
23 defendants participated in it in different ways, sometimes in
24 different times, but the government has proceeded under a
25 single theory. There is no basis in the case law for them to

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1 cut up the government's theory in this way, and the cases that
2 they cite are squarely related to when there are multiple
3 possible theories of guilt or, for example, the Natelli case,
4 when each, each predicate, when there is more than one
5 specification as a predicate for the charge -- I am sorry --
6 for the charges in the indictment, each dependent on particular
7 evidence which is unrelated to the other, it would be sound
8 practice, the Second Circuit said, to instruct the jury that
9 they must be unanimous on a particular specification to
10 convict.

11 First, the evidence in this case or the theory and
12 what is stated in Count 2 is not dependent on particular
13 evidence that is unrelated to the other evidence. It is all
14 related to the same scheme and the same fraudulent enterprise
15 that the defendants entered.

16 So while even in this scenario where it would be --
17 even in the scenario when the charging instrument is cut up,
18 the Second Circuit has said it would be sound practice to
19 instruct the jury. This is a case where the charging language
20 clearly charges a single scheme. The evidence of that single
21 scheme as we have said from the very beginning, especially in
22 connection with the defendant's various severance motions, all
23 relates to each other because it is a single scheme all the
24 defendants participated in.

25 There is no basis in the case law to cut up the

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1 government's theory in an instruction when the government's
2 theory is clear as it is in the charging language.

3 THE COURT: Let me just take a look at the cases
4 before your summation over the break, okay? I will let you
5 know.

6 MR. SCHWARTZ: That is fine. To be clear, your Honor,
7 I was not intending to argue the legal point. I was simply
8 going to point out to the jury the different kinds of conduct
9 that are encompassed within the securities fraud count and
10 discuss them separately.

11 THE COURT: Were you going to focus on the need for
12 unanimity with respect to one theory?

13 MR. SCHWARTZ: I won't now.

14 THE COURT: I am asking what you need to know for
15 summation.

16 MR. SCHWARTZ: What I will say to the jury is there
17 are basically two parts to the securities fraud that they're
18 asking you to consider. One is all of these conflicts of
19 interest, and honestly I think that can be dispatched very
20 quickly with respect to Mr. Archer. Then there is the
21 misappropriation. That is what I will spend most of my time
22 talking about. That is really the way I intend to address it.

23 MS. TEKEEI: So what we'll just add, your Honor, is
24 that the Second Circuit has also been clear, for example, that
25 juries do not need to be instructed -- sorry -- the jury does

I6QJGAL1

1 not need to be unanimous as to the overt acts in the indictment
2 and the jury does not need to be unanimous as to principal
3 liability or aiding and abetting liability. That is the realm
4 we are in right now.

5 THE COURT: Right. I don't think that is in dispute,
6 right?

7 MS. TEKEEI: We disagree with Mr. Schwartz's
8 characterization that the misrepresentations were part of a
9 different scheme.

10 MS. NOTARI: When you have a chance, I want to address
11 another issue about summing up.

12 THE COURT: Okay. Go ahead.

13 MS. NOTARI: This completely changes a lot of my
14 closing that I wasn't prepared to argue for. I feel like at
15 this point I need to scour the record and possibly --

16 THE COURT: I issued an order last night indicating
17 that, clearly suggesting I was going to do this. I don't
18 understand what the surprise is.

19 MS. NOTARI: I don't think there is a lot of precedent
20 for this.

21 THE COURT: I indicated previously to Mr. Touger, and
22 then I issued an order last night, I think, suggesting I was
23 inclined to do this or at least raising the issue of whether I
24 was going to do it. I am a little bit baffled by the surprise.
25 I got letters from both sides on whether it was appropriate,

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1 knowing this was a serious possibility.

2 MS. NOTARI: I didn't think this would happen.

3 (Continued on next page)

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1 THE COURT: Mr. Schwartz is going first anyway.

2 MR. SCHWARTZ: Did we -- sorry. Did we find out or
3 agree on what our hours are today?

4 THE COURT: We haven't. Do you want me to ask?

5 MR. SCHWARTZ: It might be helpful.

6 THE COURT: OK, I'll do that.

7 MR. SCHWARTZ: So this is going to happen, I'm not
8 sure how long it's going to take. And then I will go. I find
9 it --

10 THE COURT: Why don't we bring the jury in and talk
11 about it.

12 MR. SCHWARTZ: I find it highly unlikely that we will
13 get to Ms. Notari today.

14 THE COURT: All right. We'll see.

15 (Continued on next page)

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1 (Jury present)

2 THE COURT: Everyone can be seated. So, ladies and
3 gentlemen, in light of an argument that Mr. Touger made
4 yesterday, I'm going to briefly allow the government to
5 supplement the evidentiary record.

6 So you can do that now.

7 MS. MERMELSTEIN: Thank you, your Honor.

8 It is hereby stipulated and agreed between the parties
9 that on July 20, 2016, John Galanis pled guilty to conspiring
10 with Jason Galanis and others to commit securities fraud in or
11 about 2009 through in or about 2011, in that John Galanis and
12 others openly managed brokerage accounts of an individual and
13 effected the sale of Gerova stock, and received and concealed
14 proceeds derived therefrom, knowing that this activity was
15 designed to conceal from the investing public the true
16 ownership and control of that Gerova stock.

17 It is further stipulated and agreed, by and among the
18 parties, that this stipulation is admissible as a Government
19 Exhibit at trial. The government offers this stipulation as
20 Government Exhibit 4506.

21 THE COURT: All right. It will be admitted.

22 MR. SCHWARTZ: No objection.

23 MS. NOTARI: No objection.

24 (Government Exhibit 4506 received in evidence)

25 THE COURT: The government has offered evidence

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1 attempting to show that on another occasion John Galanis
2 engaged in conduct similar to the charges in the indictment.
3 In that connection let me remind you that John Galanis is not
4 on trial for committing acts not alleged in the indictment.
5 Accordingly, you may not consider this evidence of similar acts
6 as a substitute for proof that John Galanis committed the
7 crimes charged. Nor may you consider this evidence as proof
8 that John Galanis has a criminal personality or bad character.

9 The evidence of the other similar acts was admitted
10 for a much more limited purpose, and you may consider it only
11 for that limited purpose.

12 If you determine that John Galanis committed the acts
13 charged in the indictment, and the similar acts as well, then
14 you may -- but need not -- draw an inference that in doing the
15 acts charged in the indictment John Galanis acted knowingly and
16 intentionally and not because of some mistake, accident or
17 other innocent reasons.

18 Evidence of similar acts may not be considered by you
19 for any other purpose. Specifically, you may not use this
20 evidence to conclude that because John Galanis committed the
21 other act or acts he must also have committed the acts charged
22 in the indictment.

23 It is also important for you to know that John
24 Galanis' guilty plea was to charges stemming from the
25 investigation that resulted in Jason Galanis' arrest in

I6Q7GAL2

Summation - Ms. Mermelstein

1 September 2015 which you have already heard about. I reiterate
2 to you now that the conduct for which Jason Galanis was
3 arrested and John Galanis pled guilty was entirely unrelated to
4 this case.

5 I further instruct you that Mr. Archer and Mr. Cooney
6 were not subjects of that investigation, and there is no
7 evidence that either of them knew about Jason or John Galanis'
8 fraudulent conduct in that matter or in the investigation of it
9 until after Jason Galanis was arrested in September of 2015.
10 You are not to consider this evidence in any way against either
11 Mr. Archer or Mr. Cooney.

12 Is there anything additional you would like to add to
13 your summation in light of this?

14 MS. MERMELSTEIN: Yes. Thank you, your Honor.

15 Good morning. There wasn't any question before --
16 there wasn't any question that John Galanis is guilty. But if
17 you needed one more thing, if you were still looking for the
18 beef, you have it. There can be no question that John Galanis
19 knew exactly what he was doing.

20 And Mr. Touger's summation yesterday was all about why
21 he didn't know that anything was wrong, that he didn't suspect
22 that there was any fraud afoot. And I'm not going to go
23 through every single thing he said yesterday, because I don't
24 think you need us to do that, but let me just show you two
25 things he said that are preposterous.

I6Q7GAL2

Summation - Ms. Mermelstein

1 Can we pull up the first slide please, Ms. Sheinwald.

2 He said that the government wants you to convict John
3 Galanis because he's Jason's father, and that's why he had to
4 know that not only Jason was involved but that he agreed to
5 help him steal the money.

6 He's not guilty because he's Jason's father. But when
7 you think about what he knew in this case, he already was
8 committing crimes with Jason Galanis. When Jason Galanis
9 talked to him about seeking out Native American tribes to do a
10 bond deal, what did he think was going on? They were already
11 committing securities fraud together. They're not just father
12 and son; they were already coconspirators.

13 Let's look at one other example. Here is what
14 Mr. Touger said to you yesterday: To argue this prosecution to
15 you, the prosecution has failed to prove John Galanis had
16 direct knowledge of his son's guilt; that doesn't matter
17 because he should have realized that it's going on all around
18 him and his son was as crook.

19 And he asked you again where is the evidence of this.
20 Where is the evidence of this? He knew his son was a crook.
21 He knew his son was a crook before the very first day that they
22 had a plan with respect to the bonds. He knew it because all
23 the way back in 2009 and all the way through 2011 they were
24 already committing securities fraud together.

25 Ladies and gentlemen, that is game over; there is

I6Q7GAL2

Summation - Ms. Mermelstein

1 simply nothing else to say.

2 And when you think about what John Galanis knew and
3 what he understood in this case, at every step of the way you
4 have to think about, well, what did he know about his son.
5 Right? When he is referring deals to Jason Galanis at Burnham
6 in 2014, he knows he is a criminal; he knows that he has
7 committed securities fraud -- and not just that Jason Galanis
8 did it; they did it together. How could John Galanis think
9 that he was being asked to participate in a regular transaction
10 given what he knew about Jason Galanis?

11 Leaving aside all the reasons we talked about
12 yesterday that you already know that John Galanis is guilty and
13 knew exactly what he was doing, this leaves just no question.

14 What does it mean when John Galanis e-mails Tim
15 Anderson and says, look, there are other people at Burnham but
16 Jason Galanis is going to be your point person? What does it
17 mean when he takes a person that he knows has committed
18 securities fraud in the past, that he committed securities
19 fraud with that person, and he says make sure that's who you
20 talk to? What does that mean?

21 What about when he says, oh, by the way, we're not
22 going to do Wealth Assurance AG anymore, we're going to do
23 Wealth Assurance private client Corp.? He thinks that's
24 legitimate? He knows who is pulling the strings here and whose
25 idea it was, and he knows that person has committed securities

I6Q7GAL2

Summation - Mr. Touger

1 fraud and that he committed securities fraud with him.

2 There can be just no question that he could not have
3 believed and did not believe that this was legitimate. When he
4 gets \$2.35 million that's not on any of the documents, he
5 thought that was OK because of who Jason Galanis was? He
6 thought that this was legitimate because he trusted his son?
7 You can't trust your son if you're committing crimes with your
8 son.

9 And when he deposits it into an account that he tries
10 to keep his name off of so that no one else will know it's his
11 money, that's because he knew it was criminal proceeds. And if
12 you didn't know before, you know it a hundred percent now,
13 because they had already done it together; because there is no
14 question that he could not trust Jason Galanis. And given what
15 he knew about Jason Galanis, the only thing he could have
16 thought was that they were getting ready to do it again. Their
17 other fraud ended in 2011, and they why ready to start over.

18 That's it, ladies and gentlemen, John Galanis is
19 guilty, no question.

20 Thank you, your Honor.

21 THE COURT: Mr. Touger, is there anything you would
22 like to say?

23 MR. TOUGER: Yes, your Honor.

24 Good afternoon, ladies and gentlemen. So the
25 government has been allowed to reopen their case against John

I6Q7GAL2

Summation - Mr. Touger

1 Galanis based on my arguments which I made to you yesterday.

2 I want to say to you, ladies and gentlemen, one thing
3 before I start: I stand by every argument I made yesterday.
4 Yes, in the past, in 2009 and 2011, John Galanis committed a
5 fraud with Jason Galanis. He was arrested for that crime; he
6 pled guilty to that crime; and now he is here before you on a
7 separate and distinct crime, as the Court just told you.

8 The Court has told you that the conduct in that
9 crime -- the one from 2009 and 2011 -- had nothing to do with
10 the facts of this case, and it is only admitted to show that
11 John Galanis had personal knowledge of Jason Galanis' arrest --
12 which you probably assumed anyway, because he is his father --
13 and what you didn't know is that John Galanis committed that
14 crime with his son, and so that you can use to show that he had
15 knowledge of his son's activities. Yes, John Galanis even
16 participated in that case.

17 But what is important to note is Mark McMillan's
18 testimony. Go back and remember that testimony. He told you
19 that in 2010 something happened, and that's when John Galanis
20 separated his business from Jason Galanis. Now you know what
21 happened. This is what happened, and why John made sure his
22 business entities were separate from Jason's.

23 What is important to note in this case is that there
24 is still no evidence that Jason Galanis involved his father in
25 these events. He is still not involved in any of his business

I6Q7GAL2

Summation - Mr. Touger

1 activities; he is still not an investor in any of his accounts;
2 he still had the work at Burnham. There is no doubt about it
3 that Jason Galanis was still working at Burnham and was doing
4 deals at Burnham and that his father could recommend deals to
5 him. But that was where the contact between the two ended; the
6 evidence still shows that. The evidence still shows that Tim
7 Anderson was the one pushing this deal, not John Galanis to
8 Jason Galanis.

9 The evidence still shows that John Galanis never
10 invested in any businesses that Jason had, and Jason Galanis
11 had no interest in any business that John had.

12 There is also no evidence to show that John Galanis
13 knew that Jason Galanis was going to commit another crime.
14 Their history together explains the separation between the two.
15 John, as per McMillan's testimony, wanted his business
16 enterprises separate and distinct from Jason Galanis, and now
17 you know why. And Jason Galanis did not involve his father in
18 any of his business activities.

19 What is interesting to note is that even after John
20 Galanis was arrested -- and that was in the fall of 2015 --
21 both Tim Anderson and Raycen Raines told you they continued to
22 --

23 MS. TEKEEI: Objection, your Honor.

24 THE COURT: This is argument. It's going to be up to
25 you to decide whether the arguments of the lawyers are

I6Q7GAL2

Summation - Mr. Touger

1 consistent with the evidence in the case; and if there is any
2 testimony you want read back, you're free to hear it at any
3 time.

4 But I'm going to overrule the objection.

5 MR. TOUGER: You can ask to have the testimony read
6 back of Tim Anderson and Raycen Raines, that they continued way
7 past the fall of 2015 to try to do business with John Galanis
8 and that they respected him.

9 Yes, I stand by all my arguments made yesterday. The
10 verdict still comes down to whether John Galanis is guilty
11 because of the fact he must have known because of his prior
12 acts with his son, and that Jason Galanis is his son, that he
13 is guilty of this crime. That's what they're saying to you.
14 They are saying ignore all the other evidence of separation and
15 convict him based on that alone.

16 There is no denying the fact that this evidence must
17 have hit you like a ton of bricks, but when you give the
18 evidence a prudent, well thought out hearing, and combine it
19 with all the other evidence in this case, that the verdict for
20 John Galanis should remain the same: Not guilty. Thank you.

21 THE COURT: All right. Thank you.

22 So, ladies and gentle, now we're going to take a short
23 break and prepare for the next summation.

24 I want to ask you once again to tell Ms. Cavale what
25 your timing is for today, what time you need to leave by,

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Summation - Mr. Touger

1 because it affects how many summations we will hear this
2 afternoon. Thank you. Just remember don't yet discuss the
3 case. Thank you.

4 (Jury not present)

5 THE COURT: So, Mr. Schwartz, 2 o'clock? Does that
6 give you enough time?

7 MR. SCHWARTZ: I think so.

8 THE COURT: All right. Thank you.

9 (Recess)

10 (Jury not present)

11 THE COURT: Everyone can be seated. So I'm not
12 prepared to rule on the unanimity, so it seems like it's OK for
13 you to make your arguments but not simply argue based on that
14 language.

15 I will let you know that the jury indicated that they
16 don't have any scheduling issues this afternoon, so I think we
17 can hear both of the defense summations.

18 MS. NOTARI: Wait. What happened?

19 THE COURT: I said they don't have any scheduling
20 issues, so we will take a break after Mr. Schwartz, and then we
21 can hear your summation as well today, Ms. Notari.

22 MR. SCHWARTZ: I may be lengthy.

23 THE COURT: Excuse me?

24 MR. SCHWARTZ: I said I may be lengthy.

25 THE COURT: Is this a filibuster?

I6Q7GAL2

Summation - Mr. Schwartz

1 MR. SCHWARTZ: It's definitely not a filibuster, and I
2 have not done a run-through so I don't know how long it's going
3 to take, but I have a lot to cover.

4 THE COURT: We'll figure it out.

5 (Continued on next page)

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Summation - Mr. Schwartz

1 (Jury present)

2 THE COURT: Everyone can be seated.

3 Mr. Schwartz.

4 MR. SCHWARTZ: Thank you, your Honor.

5 And good afternoon, folks.

6 I've been waiting a very long time to come back up and
7 have the opportunity to speak to you directly, and, as you
8 know, this is going to be my last chance to talk to you
9 directly, and so I'm going to try to cover a lot of material,
10 and I'm going to try as hard as I can not to make it too dry.

11 But I want to start first of all by thanking each and
12 every one of you for your service here over the last month. I
13 think certainly myself, Mr. Archer, Laura, Craig, Kendall
14 appreciate the hard work and attention you obviously are paying
15 every single day; and on this point at least I think I can
16 speak for the other lawyers, including the government and Judge
17 Abrams, and we thank you all very sincerely for your
18 attentiveness to the evidence.

19 I've said this a few times to witnesses over the last
20 few months, but what we are doing in this courtroom is
21 incredibly serious and incredibly important. You all are being
22 called upon to judge people, some of your fellow citizens, and
23 to serve as a check on the power of government. Three men's
24 lives are at stake, and the case is almost in your hands.

25 Now, that said, like me, some of you are probably

I6Q7GAL2

Summation - Mr. Schwartz

1 thinking forward to next week when you'll get some time off. I
2 know that I am. Next week is the 4th of July, and I am looking
3 for the first time in a long time that I'm not going to have to
4 go to work over the weekend and prepare to come into this
5 courtroom and talk to you all, and I was thinking I might go to
6 the movies, which I haven't done in a very, very long time.

7 Personally I like scary movies. I didn't used to, but
8 over the years I've come to enjoy scary movies. There is one
9 called Hereditary that is out now that I might go see, it looks
10 pretty good. But I grew up -- is it good?

11 I grew up in the '80s, so I grew up with like
12 Nightmare on Elm Street and Friday the 13th, those kinds of
13 films, and those are the scary movies that I grew up with.
14 Then something happened in the '90s and horror movies started
15 to change a little bit, and the one I really remember was The
16 Blair Witch Project. Do you remember that one? The thing that
17 made The Blair Witch Project so terrifying, such a game
18 changer, was that it was told from the point of view of the
19 characters that were in the movie. We didn't find out who the
20 Blair Witch was or what the Blair Witch was until the
21 characters also in the movie also found out. I thought that
22 was revolutionary. But most scary movies -- definitely the
23 ones I grew up on -- aren't told from that point of view.

24 In most scary movies you see the big picture, you see
25 how the characters fit in and how many of the pieces fit

I6Q7GAL2

Summation - Mr. Schwartz

1 together. We knew that Freddy Krueger was hiding behind that
2 door ready to attack when the character opens it. That's why
3 no one wants the character to open the door. We knew that
4 there is that monster clown lurking in the gutter who is going
5 to get that little kid if he goes after his toy boat that fell
6 into the gutter. That's what makes a lot of scary movies so
7 scary, because we see the monster -- we see the monster -- but
8 the characters in the movie don't. We can anticipate what is
9 going to happen but the characters in the movie don't; they're
10 taken by surprise.

11 Now, yesterday Ms. Mermelstein gave an excellent
12 summation. She is an excellent lawyer -- as all the government
13 lawyers are -- and she gave an excellent summation. And, by
14 the way, as Judge Abrams told you before she started, and as
15 she will tell you again tomorrow, these arguments are just
16 arguments; they're not evidence. The evidence is who you saw
17 up there and the documents that you saw on your screens and
18 held in your hands and the stipulations that the parties read
19 into evidence.

20 And I suspect you heard a bunch of things in
21 Ms. Mermelstein's argument that surprised you, that you hadn't
22 heard before, and it's your job to ask yourselves: Does the
23 evidence actually say that, or was that just argument?

24 After a month sitting together throughout this trial,
25 if you heard it for the first time in argument then it's

I6Q7GAL2

Summation - Mr. Schwartz

1 probably just argument, not evidence. And we will talk more
2 about that a little bit later. But Ms. Mermelstein presented
3 her argument very, very smoothly and very, very smartly. You
4 remember, it had four parts. She started by laying out the
5 plot, and then she told us how it all worked, and then she told
6 us what different people did in that plot.

7 And what made that argument so powerful -- to me at
8 least -- was that just like in those horror movies I grew up
9 with, we all knew what was behind the door; we all knew who the
10 monster lurking in the sewer was; and in this story it was
11 Jason Galanis. And laying it out that way, the way that
12 Ms. Mermelstein did in her summation, it seemed so obvious.
13 Right? Because we knew after sitting here for a month, we knew
14 that Jason Galanis was committing this huge fraud. There is no
15 dispute about that; I told you that on day one. Jason Galanis
16 was committing this huge fraud, and we could see how he was
17 doing it and how he was pulling everyone's strings, and it all
18 seemed to make a lot of sense.

19 But the problem is Devon couldn't see the big picture,
20 Devon wasn't watching the movie; Devon was in the movie. Devon
21 didn't find out that Jason Galanis was the monster until the
22 whole world did, when Galanis was arrested on unrelated charges
23 in September 2015 and the SEC started investigating this case
24 and the businesses involved in it and the businesses that Devon
25 was trying so hard to build. And, as the Judge just told you,

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Summation - Mr. Schwartz

1 unlike John Galanis, Devon had no idea about that. Devon
2 didn't know about Jason and John Galanis' prior crimes. There
3 is no such evidence; the Judge just told you that.

4 So, as you assess the evidence in this case, and as
5 you listen to the arguments -- my arguments and the
6 government's arguments -- the question you have to ask yourself
7 is: What did Devon know then? What did Devon believe? What
8 did he intend? Not what can we figure out now.

9 Because I will be the first to admit that Devon Archer
10 took actions which you've heard about that had the effect of
11 helping Jason Galanis. I told you that right up front a month
12 ago in my opening statement Devon was used by Jason Galanis to
13 further his scheme, and he has regrets, that's not in doubt.
14 But a lot of people in this case took actions that helped Jason
15 Galanis' scheme who were definitely not a part of it.

16 Just think of the government's own witnesses. Their
17 very first witness, Tim Anderson, the lawyer, he helped, in
18 fact he put together all the bond documents. Raycen Raines, he
19 helped too, he was the one that brought the WLCC to the table.
20 Daniel Turney, remember him, the gentleman from Atlantic, even
21 though he had serious, serious concerns about what was going
22 on, he still went ahead and helped put those WLCC trades
23 anyway. And all of those lawyers, accountants, and bankers,
24 and business managers, and professionals who touched all of
25 these deals, they helped too, but they didn't mean to; they

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Summation - Mr. Schwartz

1 didn't know what they were doing; they certainly didn't intend
2 to defraud anyone; yet their actions had the effect of helping
3 Jason Galanis commit his crimes. And I submit to you that
4 Devon Archer was in the same position. He didn't intend to
5 defraud anyone, and the evidence of that is clear.

6 At the beginning of this trial I asked you to keep in
7 mind one question as you listened to the evidence. I asked you
8 to ask yourself: Does this show that Jason Galanis was
9 stealing the bond money? Does the evidence the government is
10 showing you prove that Devon was part of a scheme to steal that
11 money? And I told you then a month ago that the answer would
12 always be no, and I submit to you now that I was right, the
13 evidence does not show -- and certainly does not show beyond
14 each and every reasonable doubt -- that Devon knew that Jason
15 Galanis was stealing the bond money and that he intended to
16 help Jason Galanis do it.

17 Now, the other thing I'm looking forward to doing next
18 week, by the way, is maybe going to a barbecue or two to
19 celebrate Independence Day. This is kind of a complicated time
20 in America, but I think the one thing that we can all agree
21 upon is that we can celebrate the Constitution and the Bill of
22 Rights. And the Bill of Rights is actually why we're here
23 today. The Bill of Rights is why you all are here today. It
24 guarantees Devon and anyone a right to a jury of their peers.
25 And actually if you stop to think about it, a lot of the Bill

I6Q7GAL2

Summation - Mr. Schwartz

1 of Rights is about criminal trials. And all of those rights
2 are there in the first ten Amendments to the U.S. Constitution,
3 and they are designed to hold the government in criminal cases
4 to the enormous -- the extraordinarily high burden of proof
5 beyond a reasonable doubt.

6 Now, Judge Abrams is going to instruct you all on the
7 law probably tomorrow, and I know you all will listen closely
8 as you have throughout this trial, and I expect that she will
9 tell you that if you have any doubt, so long as it's based on
10 reason, then you have an absolute obligation, a duty to find
11 Devon Archer not guilty.

12 So, in honor of the Bill of Rights, the first ten
13 Amendments to the U.S. Constitution, I want to spend my time
14 with you today talking about ten reasonable doubts that
15 absolutely permeate the government's case against Devon Archer.

16 The first reasonable doubt actually comes from the
17 victims themselves. Now, make no mistake, there was a fraud
18 here, there are victims, and actually there are two different
19 kinds of victims in this case.

20 Mr. Wenner, if you could bring up the slides.

21 Judge Abrams is going to instruct you that in the
22 securities fraud charge in this case -- this is the actual
23 charge by the way -- there are two pieces to it. The
24 allegation is that the defendants engaged in a scheme to
25 misappropriate the proceeds of several bond issuances by the

I6Q7GAL2

Summation - Mr. Schwartz

1 WLCC, and also that they caused investor funds to be used to
2 purchase the bonds in violation of fiduciary duties with all
3 those undisclosed conflicts of interest.

4 So, what that means is, according to the government --
5 and I think they're right about this -- there are two different
6 kinds of victims of Jason Galanis' scheme. The WLCC is a
7 victim and the pension fund clients of Atlantic and Hughes are
8 victims.

9 So, where does the doubt come from? The doubt comes
10 from the fact that Devon Archer had absolutely no interaction
11 with these victims. Devon Archer did not communicate in any
12 way, shape or form with any of the victims in this case. And
13 you know that from the evidence you've heard. Devon had no
14 contact whatsoever with the WLCC. The only witness that you
15 heard in this trial from the WLCC was Mr. Raines, and
16 Mr. Raines says he has never communicated with Devon Archer in
17 any way.

18 And, by the way, the government put in a multitude of
19 e-mails; none of those are between Devon Archer and the WLCC
20 either. You can ask for anything. So you can ask, please send
21 me all e-mails between Devon Archer and the WLCC, and you will
22 get nothing in return. That simply did not happen.

23 And, by the way, even the lawyer who was involved in
24 the bond deal, Tim Anderson, he had no contact with Devon
25 Archer.

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Summation - Mr. Schwartz

1 So, what about the pension funds? The pension funds
2 also had absolutely no contact with Devon Archer. Now, you
3 heard from several witnesses from the pension funds. You heard
4 from Mr. Griffin he had never met Mr. Archer. You heard from
5 Mr. Smith, the first gentleman who testified who came in from
6 Nebraska, he had never heard of, let alone spoken to Mr.
7 Archer.

8 You heard from Mr. Moore, who I believe was from the
9 Goodyear Company. He had never interacted with Devon Archer.
10 You heard from Mr. Turney who worked at Atlantic, the
11 investment advisor, and he had never had any interaction with
12 Devon Archer.

13 It is simply not the case that Mr. Archer had any
14 communication whatsoever with any of the victims. And so in
15 this case that's about a scheme to defraud, to lie to the WLCC
16 and the pension funds, Mr. Archer did not tell any of those
17 lies. That is undisputed in this case. OK? But also Mr.
18 Archer had no idea what was being said to these victims.

19 Now, the government showed you some e-mails
20 selectively that got forwarded by Jason Galanis -- and we will
21 talk about this later on -- but that was a tremendously
22 misleading intentionally by Jason Galanis presentation of what
23 happened. Right? And Mr. Archer certainly did not have -- and
24 the government wouldn't argue otherwise -- a full picture of
25 what was being said to these pension funds. And that's

I6Q7GAL2

Summation - Mr. Schwartz

1 critical. That's critical, because -- if you go to slide 11,
2 please, Mr. Wenner -- you heard from the government's expert --
3 this is the government's expert -- that there is nothing
4 inherently unlawful about an investment advisor having a
5 conflict of interest.

6 I mean, by the way, Devon Archer is not an investment
7 advisor. He was not acting as an investment advisor; he was
8 not an executive of any of the investment advisors in this
9 case. But even for the investment advisors themselves, the
10 evidence from the government's own witness is that an
11 investment advisor is not barred from having conflicts, but
12 those conflicts have to be disclosed. You have to tell people
13 if there are potential conflicts that those conflicts exist.

14 Now, we all know -- because we've watched the movie --
15 we all know that's not what Michelle Morton did. We all know
16 that she and Gary Hirst just went ahead and bought those bonds
17 without their clients knowing it and stuck it right in their
18 accounts, and they didn't even talk about it until later. But
19 Devon didn't know that. Devon didn't know that. You know,
20 Devon had every reason to believe that any conflicts -- and I'm
21 not sure there is any evidence that he knew the conflicts
22 existed -- were disclosed.

23 Go to slide 10, please Mr. Wenner.

24 First of all, the government argued that Devon knew
25 that these bonds were being foisted upon the pension funds.

I6Q7GAL2

Summation - Mr. Schwartz

1 And they brought up this e-mail. They read to you only the
2 second highlighted sentence here. "I believe they will take
3 \$28 million of the Wakpamni/Oglala Sioux issue that Greenberg
4 Traurig is working on." That's the first bond issuance.

5 The government in their summation did not read to you
6 the sentence that preceded it, which is the last paragraph of a
7 lengthy e-mail from Jason Galanis, which says "We have agreed
8 to give the firm" -- meaning Hughes -- "an opportunity to
9 participate in Native American bond new issues."

10 Does that sound like two conspirators talking about
11 sticking the pension fund clients of Atlantic and Hughes with
12 bonds against their will? No, it sounds like presenting an
13 investment opportunity to those clients. And there is nothing
14 wrong with that, and that's what the government's own witnesses
15 say.

16 Now, what we also saw was evidence that the conflicts
17 were disclosed, and that's on slide 12. The government didn't
18 use this document at all in their summation. This is the
19 private placement memo, if you recall that. And one of the
20 things -- and I went through this at great, great length with
21 Mr. Anderson when he was on the stand -- that private placement
22 memo had all sorts of disclosures if you recall that. It
23 disclosed -- it's marketing material for potential
24 disclosures -- it disclosed the bonds were not rated; it
25 disclosed the bonds were restricted; it disclosed all the

I6Q7GAL2

Summation - Mr. Schwartz

1 things Mr. Touger talked about yesterday about how it was going
2 to be invested in private equity; but it also disclosed this
3 language: "Certain officers and directors of the placement
4 agent" -- remember that's Burnham Securities Incorporated --
5 "are affiliated with the insurance provider" -- that is Wealth
6 Assurance. That's a disclosure of the conflicts of interest.

7 So, how is Mr. Archer to know that there are
8 conversations that are taking place between Michelle Morton and
9 her clients, or not taking place and she is just sticking these
10 bonds in their portfolio accounts? He doesn't know that. What
11 he knows is the information that Jason Galanis selectively
12 chooses to show to him; and that's that this is an arms-length
13 opportunity for those clients and that any conflicts of
14 interest have been disclosed. So, that's reasons one and two
15 why there is reasonable doubt here: There is no contact with
16 the WLCC victims and no idea of what misrepresentations are
17 being told to them; and there is no contact with the pension
18 fund victims, no idea of what is being told to them, and every
19 reason to believe that those transactions are arms length and
20 legitimate. So that's one and two. I did two together so I'll
21 move faster.

22 Let's go to the third reasonable doubt in this case:
23 That's the real conspirators. OK? Other than Jason Galanis,
24 who lied to everyone about everything, the evidence is clear
25 that Devon Archer barely knew the real conspirators here. All

I6Q7GAL2

Summation - Mr. Schwartz

1 right?

2 That's Gary Hirst. He's up in here on a page by
3 himself because there is absolutely no evidence connecting him
4 in any way, shape or form to Devon Archer, no communication
5 whatsoever.

6 Who else? Michelle Morton. Michelle Morton. The
7 evidence that you have about interactions between Devon Archer
8 and Michelle Morton is incredibly limited, and you saw e-mails,
9 you saw texts, you saw phone records, and that amounts to
10 perhaps they had one conference call, they had two e-mails and
11 perhaps very very late in the game in 2015 they met for a
12 drink. OK?

13 What the evidence shows is Michelle Morton did not
14 know Devon Archer. You see this e-mail on slide 14. This is
15 October 29, 2014, and Jason Galanis is for the very first time
16 introducing Michelle Morton and Devon Archer. So think about
17 that for a second, October 29, 2014.

18 Yesterday Ms. Mermelstein did an excellent job I think
19 of talking about the time line and when things were happening.
20 What had already happened by October 29, 2014 in this case that
21 is about these fraudulent bonds and stealing their proceeds and
22 sticking them with the clients? They had already done the
23 first two bond issuances. They had already done the bond
24 issuance where Michelle Morton is supposedly sticking all of
25 her pension fund clients with these bonds. Devon Archer and

I6Q7GAL2

Summation - Mr. Schwartz

1 Michelle Morton have not even been introduced to each other on
2 e-mail. That happens for the first time on October 29, 2014,
3 and that's because Mr. Archer is part of the group that's going
4 to potentially make an investment to acquire the company. So
5 he is participating -- as he has throughout this case -- as a
6 potential investor. Because, as I told you in opening
7 statements, what he is in this for was simply to build a
8 business, and he did not know -- and it doesn't make sense that
9 he would invest in -- the fact that Jason Galanis had put a
10 fraud at the heart of that business, that that business that
11 Devon Archer was trying to build was rotten.

12 Now, look also on slide 15. This is the text that I
13 was referring to a moment ago. These are text messages between
14 Michelle Morton and Jason Galanis.

15 And, by the way, you didn't see any of Devon Archer's
16 texts in this case. Devon is not texting with these people.
17 They are not his friends. He is doing business with them.
18 Jason Galanis is bringing these people into his orbit. So,
19 this is a communication between Michelle Morton and Devon
20 Archer, and this is talking about that one brief meeting that
21 they had on March 25, 2015. And there you see Michelle Morton
22 saying "I was just thinking about our meeting and thought,
23 gosh, that Devon guy looks familiar, and then I realized ...
24 holy crap, I teased and was goofy with Devon Archer. I should
25 have made a better impression."

I6Q7GAL2

Summation - Mr. Schwartz

1 A few things. What does that mean to you? First of
2 all, she didn't even recognize him. That was the first time
3 they were meeting in person. She didn't even know who the guy
4 was until March 26, 2015.

5 And look at the nature of the relationship, right?
6 She is talking to Jason Galanis the next day, saying I should
7 have made a better impression; this is not something I can joke
8 with. That's not the relationship that conspirators have with
9 one another. This is Michelle Morton meeting with a potential
10 investor who is going to acquire her business. That's the way
11 she approached it. That's the way Mr. Archer approached it.
12 That's an arms length business meeting between strangers.

13 Now, all that said, Michelle Morton, the evidence
14 shows, still couldn't keep straight who Devon Archer is. You
15 saw a bunch of texts where she can't tell the different between
16 Bevan and Devon and the other Devin, and there is a Kevin
17 apparently -- we didn't find out who that was -- but there is a
18 Kevin. Michelle Morton does not know who Devon Archer is.

19 And if we go to slide 18, remember Mr. Santos, the
20 fellow who works at the U.S. Attorney's office who testified
21 about the analysis that he did on Michelle Morton's phone?
22 That was fascinating. He had pulled out all of the contacts in
23 Michelle Morton's phone, and we saw that she spoke to Jason
24 Galanis like ten times more often than she spoke to her own mom
25 and dad. But who was the one person who was not in that phone

I6Q7GAL2

Summation - Mr. Schwartz

1 at all? It was Devon Archer. Devon Archer just didn't know
2 Michelle Morton, his supposed coconspirator.

3 Let's talk about Francisco Martin, the fellow who
4 testified here. He also never met Devon Archer. And he
5 testified at length about the fact that Jason Galanis would go
6 out of his way to introduce him to people that were important
7 to his businesses and his fraudulent businesses. All right?
8 He set up a lunch; he set up a meeting with Mr. Dunkerley that
9 did business with Gary Hirst; got together socially with
10 Mr. Cooney; he got together on a business meeting with
11 Mr. Sugarman. There was never an effort to connect Francisco
12 Martin and Devon Archer. They simply didn't know one another.

13 And you saw in the e-mail that we read yesterday that
14 when one of Mr. Archer's own associates, this fellow Neil
15 Callahan from one of the Rosemont companies says, hey, have you
16 ever heard this guy Francisco Martin, the honest response from
17 Devon was, no; should I know who that is? He had no idea who
18 Francisco Martin, his alleged coconspirator was.

19 Now how about Hugh Dunkerley? He did know who Hugh
20 Dunkerley was. Right? They were both on the board of
21 directors of Wealth Assurance Holdings together. And that's
22 the company that sits at the top of that corporate org chart
23 that became the Valor Group. But Mr. Dunkerley told you he had
24 never met Mr. Archer, he had spoken to him only on conference
25 calls, and that they never discussed anything improper and they

I6Q7GAL2

Summation - Mr. Schwartz

1 certainly never discussed these WLCC bonds.

2 Look at page 21. This is Mr. Dunkerley's testimony:
3 "Q. You had discussions with Mr. Galanis" -- Jason Galanis --
4 "about improper things, true?

5 "A. Absolutely.

6 "Q. And Gary Hirst, true?

7 "A. True.

8 "Q. And Francisco Martin, true?

9 "A. Yes."

10 But never Devon Archer. They simply didn't have those
11 communications; that was not their relationship.

12 So all of these people that Devon Archer supposedly
13 conspired with, schemed with to steal the proceeds of the WLCC
14 bond, he barely knew them, and that was by design. Jason
15 Galanis controlled who knew what. And you saw that over and
16 over and over again.

17 Look here early on, this is him -- this is excuse me
18 Francisco Martin -- telling you about what Jason Galanis did
19 with information, "sending this to the entire team was not a
20 good idea. Jason Galanis is not pleased. Jason is very
21 sensitive on how communication flows."

22 And you saw that Jason Galanis would ghost write
23 e-mails for Mr. Martin and other real coconspirators to send
24 out. He was pulling their strings every step of the way.

25 And that was true especially with Mr. Archer. And if

I6Q7GAL2

Summation - Mr. Schwartz

1 you go to slide 25, you remember this e-mail. This is Jason
2 Galanis absolutely irate that someone has breached his
3 information protocol. "If you fucking e-mail Devon and Rohan
4 ever in the same fucking e-mail I disown you. Do not risk our
5 relationships. It's all we have."

6 That's what Devon Archer was to Jason Galanis. He is
7 not a coconspirator; he's not a friend; he was a set of
8 relationships to be exploited. And we are going to talk about
9 that later on, but you saw that over and over and over
10 throughout this trial, that Jason Galanis was using Devon
11 Archer to get at his connections to politics, to money and to a
12 good reputation, all things that Jason Galanis coveted.

13 And you saw that specifically with respect to the
14 facts of this case Jason Galanis took steps to hide information
15 from Devon Archer. You remember this bit of testimony on slide
16 26 from Mr. Dunkerley? Remember, they're on the board of
17 directors of Valor Group together, Mr. Dunkerley and Mr.
18 Archer, but they were never in the same room together, and that
19 was because that's how Jason Galanis wanted it. Jason Galanis
20 told you.

21 "Q. "He instructed you not to physically attend Valor Group
22 Ltd. board meetings when Devon Archer would be physically
23 present, true?

24 "A. That is true, yes.

25 Why? Why is Jason Galanis keeping Hugh Dunkerley

I6Q7GAL2

Summation - Mr. Schwartz

1 apart from Devon Archer? It's because he didn't want Devon
2 Archer to find out the truth. And you see on the flip side the
3 very selective information that Jason Galanis chose to share
4 with Devon Archer. Look here. This is just before the first
5 bond issuance closes in late July of 2014.

6 According to the government, this scheme was in full
7 swing at this point. But what is Jason Galanis providing to
8 Mr. Archer and what has he requested? He has requested a full
9 package of all of the audited financials, all of the work that
10 those accountants had done about these various entities,
11 because he wanted to understand the actual bona fides of the
12 business. He wanted to understand what these things are. And
13 Jason Galanis was more than happy to provide that information.
14 He was more than happy, as he often did -- if we flip the
15 page -- to share the information, especially because he was
16 able to say that the biggest firms in the world were involved,
17 KPMG, Ernst & Young, PriceWaterhouseCoopers. All of these big
18 firms, he was able to say they are all involved in this, and
19 what we are doing, what this business is, the Wealth Assurance
20 Holdings business, the Valorlife business, is absolutely
21 legitimate.

22 Here you see on slide 30 this is the actual
23 organizational chart of the Valor Group controlled by
24 Mr. Sugarman. And you recall Mr. Archer had received a small
25 number of class B shares in return for being a member of the

I6Q7GAL2

Summation - Mr. Schwartz

1 board of directors. We will talk about that a little bit
2 later. This is what Jason Galanis wanted Devon Archer to see.
3 And, by the way, this is what Devon was interested in; this is
4 the business that he was trying to build. It was that
5 so-called roll-up plan, the financial conglomerate.

6 And over and over and over again Jason Galanis would
7 hammer that home to Devon. Look at slide 31. This is Jason
8 Galanis laying out the road map for the roll-up plan. It's
9 going to involve investment banking, asset and wealth
10 management, insurance, private equity, real estate, renewables,
11 technology, special opportunities, structured finance. And
12 Devon's response is, yes, that's exactly what I want to get
13 involved in; I feel more organized in this thinking. Not, man
14 this is a great cover story for a big scheme to steal \$60
15 million in bonds. Yes, this is what we need to be doing.

16 Over and over and over again. Look at slide 32.
17 Again, I'm not going to read these all to you, but there are so
18 many. It is over and over. Swiss Life Lichtenstein, Top Coat
19 of Switzerland, talking about building this financial services
20 conglomerate. That's what they thought they were investing in.

21 Even that very same e-mail on slide 33 that I talked
22 about before and that Ms. Mermelstein spoke about yesterday,
23 that at the very bottom of it mentions giving the opportunity
24 to participate in Native American bond new issues, what's that
25 e-mail about? It's not about the WLCC bonds; it's about

I6Q7GAL2

Summation - Mr. Schwartz

1 acquiring Hughes Capital Management, a firm that manages \$900
2 million on a discretionary basis for institutional clients.
3 That's what was attractive to Devon; it was obtaining these
4 firms, combining them and hopefully selling them for more than
5 the sum of the parts.

6 Over and over. Slide 34. Jason Galanis is talking
7 about \$12.5 billion in AUM -- that's assets under management.
8 Over and over he is dangling what Devon wants, which is this
9 financial services conglomerate. But at the same time -- at
10 the same time -- he is also lying to Devon about the WLCC
11 bonds.

12 So, ask yourself this: If Devon is part of a scheme
13 to steal the proceeds of those bonds, if he knows that Jason
14 Galanis is stealing that money, then why is he at the same
15 time -- he, Jason Galanis -- why is he lying to Devon about the
16 bonds?

17 Turn the page. This is an e-mail on November 19,
18 2014. Again, this is after the first two bond issuances. And
19 Devon -- excuse me -- Jason Galanis is sending to Mr. Sugarman
20 and Mr. Archer pictures, saying, look, this is what the bonds
21 have been able to do; that money is really being put to work.

22 If Devon was part of a scheme to steal these proceeds
23 from the get-go -- remember, Ms. Mermelstein kept saying that,
24 from the get-go, the very first day the money comes in, where
25 does it go, it goes to Sovereign Nations and it goes to pay for

I6Q7GAL2

Summation - Mr. Schwartz

1 the down payment on that apartment the very first day. That
2 was back in August of 2014. But here we are in November of
3 2014 and Jason Galanis is still lying to Mr. Archer and saying,
4 no, these bonds are doing what they are supposed to do; look,
5 look at the good work that they're doing.

6 Look at the next page. This is six months later.
7 This is the very same month that they're closing the third bond
8 issuance, April 2010, and Jason Galanis is sending pictures of
9 active construction. These are just lies.

10 Page 37, he is lying, he is saying, "They're getting
11 there, see attached, rewarding to see it happening."

12 By the way, we don't even know if these are actually
13 pictures of the reservation. The testimony that we heard from
14 Mr. Raines was that they did the groundbreaking, they sort of
15 built the structure, and then there was nothing beyond that;
16 that was the money from the first bond issuance. These may be
17 for all I know Google images pictures.

18 But what is clear as day is that Jason Galanis -- even
19 as they're closing the third and final batch of WLCC bonds --
20 is lying to Devon Archer and saying, yeah, the money is still
21 being put to the use that it was intended to be put for. That
22 is not what you tell a coconspirator in a scheme to steal the
23 bond money.

24 But it didn't stop then. Turn the slide. This is
25 August 4, 2015. They're done with the bonds at this point.

I6Q7GAL2

Summation - Mr. Schwartz

1 Right? There are no more WLCC bonds at this point. But Jason
2 Galanis is still stringing Devon along; he is still telling
3 him, look, this is the bonded duty free warehouse being built
4 on the Pine River Reservation. He is trying to convince Devon
5 that those bonds are real and those bonds are legitimate.

6 If Devon were part of that scheme, why would this be
7 necessary? If what Ms. Mermelstein said yesterday were true
8 and from the get-go Mr. Archer had been part of a scheme to
9 steal this money, why is Jason Galanis sending those pictures
10 to him? It doesn't make any sense.

11 By the way, slide 40, you see Mr. Archer's response.
12 "This is a beautiful thing." That's what he thought.

13 Now, Jason Galanis lied and hid the truth in other
14 ways as well. So, one thing he did was simply not allow people
15 to talk to one another, not share information. Another thing
16 he did, as we just talked about, was he told explicit lies.
17 Another thing that he did was he would stick people in the
18 middle. And one thing that you may have noticed over and over
19 and over in the charts that the government put into evidence
20 was the presence of this thing called the Wolff Law Firm,
21 Clifford Wolff, and sometimes other lawyers as well. Over and
22 over when Jason Galanis wanted to put separation between the
23 person that he was taking advantage of and where he was
24 stealing money to, he would put a law firm in the middle
25 because a law firm gave legitimacy.

I6Q7GAL2

Summation - Mr. Schwartz

1 You saw that not only with the money that goes to
2 Rosemont Seneca Bohai that's ultimately used to pay for those
3 bonds -- and we will talk about that \$15 million -- but you see
4 the same thing if you go to slide 42, when Jason Galanis and
5 Hugh Dunkerley were stealing money from Valorlife.

6 Now, I'm going to talk about this transaction a little
7 bit more later on. I suspect that the full import of it may
8 not have hit at the time. This is a totally separate crime
9 that Jason Galanis and Hugh Dunkerley are committing. There
10 are no bonds on this picture, right? There is no WAPC, there
11 is no U.S. Bank, there's no WLCC. This is money that Jason
12 Galanis and Hugh Dunkerley simply embezzled from Valorlife.
13 And that money ends up into Jason Galanis' Tribeca apartment.

14 But right there in the middle of it, as a screen
15 between the victim -- Valorlife -- and the recipient of the
16 money -- Jason Galanis' apartment -- is that law firm, and it's
17 designed to add legitimacy. That's just what Jason Galanis did
18 with Devon and the \$15 million, and did that when he stole that
19 money out of Valorlife and used it to buy his own apartment.
20 So, that's the third reasonable doubt, it's the conspirators
21 and the fact that Devon didn't know the conspirators, was lied
22 to by the conspirators, and was deceived over and over and over
23 again about everything that matters by Jason Galanis.

24 So, relatedly what is the fourth reasonable doubt?
25 The fourth reasonable doubt in this case comes from the two

I6Q7GAL2

Summation - Mr. Schwartz

1 conspirators that you heard from: Hugh Dunkerley and Francisco
2 Martin. And what was amazing was they told you how
3 extraordinarily limited their knowledge was.

4 Hugh Dunkerley told you that even though he was the
5 one who was running that Wealth Assurance Private Client
6 account, that piggy bank where the bond funds went and then
7 Jason Galanis caused to be spread all over the world, even
8 though he was running that account, even though he was the one
9 who signed as the placement agent and he signed as the annuity
10 provider, he was the one that created all of these conflicts,
11 he was the one that was there at the closing, he had no idea
12 that Jason Galanis was stealing this money until he actually
13 looked into the bank statements for Wealth Assurance Private
14 Client and saw the money being misappropriated. Right? He saw
15 nothing wrong with the deal.

16 It wasn't until he saw what happened to the money by
17 wiring it to different corporations and not putting it into a
18 variable annuity that he knew something was wrong. That is
19 devastating. That's true, by the way. Right? Hugh Dunkerley
20 didn't know until he saw where the money was going, but Devon
21 Archer never saw where the money was going. OK?

22 Let's talk about that \$15 million. Hugh Dunkerley was
23 actually the person that transferred that \$15 million from
24 Wealth Assurance Private Client Corporation to Thorsdale. He
25 told you he did that; he went into the bank and he did that.

I6Q7GAL2

Summation - Mr. Schwartz

1 And he told you he did it in a very, very specific way. Do you
2 recall that? He did it in the same way that Mark McMillan did
3 with the Sovereign Nations account. He went into the bank, he
4 filled out a withdrawal ticket, and then he filled out a
5 deposit ticket for another account rather than just sending a
6 wire.

7 Do you recall I talked to Mr. Dunkerley about this on
8 the stand. He says, are you accusing me of having \$15 million
9 in cash? No, of course not. But he did it as a cash
10 transaction to deliberately hide the source of the money. That
11 was the government's own argument about the Sovereign Nations
12 bank account, and it's equally true about this account. You
13 cannot look -- from the bank statements alone you cannot tell
14 where that money is coming from or where that is going to.

15 And, if you recall, when the F.B.I. agent, Agent
16 Kendall was on the stand, she admitted that. She admitted that
17 if you look at bank statements, you can't tell, that she had to
18 go to other documents, other documents that weren't referenced
19 on her chart, including, if you flip the page, to those
20 withdrawal and deposit tickets.

21 And it's only because someone happened to write on the
22 left-hand side there of Exhibit 565 "transfer to Thorsdale
23 Fiduciary and Guaranty" that we can even be sure that it's the
24 same \$15 million. Now, it's a fair assumption, \$15 million on
25 the same day on the same bank branch. But that was done very

I6Q7GAL2

Summation - Mr. Schwartz

1 specifically to break the paper trail.

2 Now, Ms. Mermelstein yesterday said, well, yes, it was
3 done to break the paper trail but not to hide it from Devon
4 Archer, it was to hide it from the F.B.I.

5 That doesn't make sense, if you think about it. If
6 the purpose was to hide this from the F.B.I., they would have
7 done this at every step of the way. But they didn't, and they
8 especially didn't do it when the money came to Devon Archer.
9 When the money came to Devon Archer, it came as a straight wire
10 transfer.

11 Now what's another thing, by the way, that the
12 government said yesterday? They said on page 47 "Look who is
13 on the account" -- this is again talking about the Sovereign
14 Nations account -- page 47, "Look who's on the account, not
15 John Galanis, it's Mark McMillan, and that tells you that John
16 Galanis knew he was getting dirty money because he was hiding
17 his involvement."

18 Well, I don't know if that's right or that's wrong; I
19 leave that to you all; but one thing is crystal clear: Devon
20 did everything in his own name in this case. Right? We saw
21 over and over again those Rosemont Seneca Bohai bank records,
22 and the government pointed out over and over they say right on
23 the front care of Devon Archer, and they showed you the account
24 opening documents that showed Mr. Archer and Mr. Momtazi as the
25 managing members. Devon is not hiding anything. The paper

I6Q7GAL2

Summation - Mr. Schwartz

1 trail to Devon is entirely clear. That's because Jason Galanis
2 is not making any efforts to protect Devon Archer.

3 Now, on that \$15 million in slide 49 the fascinating
4 thing was even Hugh Dunkerley who transferred that money, he
5 had no idea that that was money that was going to be invested
6 in the second bond issuance.

7 So, the government -- this is another example of being
8 in the movie versus watching the movie -- the government showed
9 you that chart with the money moving in a big circle. That to
10 me was a very powerful chart. The money did move that way, it
11 moved in a big circle, but Devon didn't know it, and in fact no
12 one who was involved in any step of that transaction knew it.
13 Hugh Dunkerley, who does the first step in that transaction, he
14 had no idea that that was money from the first issuance being
15 recycled and spent on the second bond issuance.

16 You remember Jason Galanis had made up this lie to
17 Hugh Dunkerley, he had said, no, no, that's Devon Archer's
18 Chinese investors, he's got some investment contracts with the
19 Chinese and it's going to expire if he doesn't place it, so it
20 has to be placed into bonds now, that's the \$15 million.
21 That's what Jason Galanis tells Hugh Dunkerley. And it wasn't
22 until after he was arrested and the government told him that's
23 what happened to the money that Hugh Dunkerley understood where
24 the money came from.

25 Here is the testimony on slide 50:

I6Q7GAL2

Summation - Mr. Schwartz

1 "Q. Even though you yourself had transacted \$15 million from
2 the Wealth Assurance Private Client Corporation account to the
3 Thorsdale account, you did not know that this is the money that
4 was used to buy the second bond issuance, correct?

5 "A. Correct.

6 "Q. You did not know that until after you were arrested, true?

7 "A. True."

8 And he tells you that, it was not until he read the
9 complaint in this case that he learned that's what happened to
10 the money.

11 Now, I submit to you if Hugh Dunkerley didn't know
12 that, then how in the world could we think that Devon Archer
13 knew that money was traveling in a circle?

14 Remember, Hugh Dunkerley brought a whole lot more
15 background information about Jason Galanis than anyone else in
16 this case. At the time that Hugh Dunkerley is telling us very,
17 very honestly that he doesn't know that this money is traveling
18 in a circle, he already knows that Jason Galanis is stealing
19 the bond proceeds; he's wiring it all over the place; and on
20 slide 51 he has committed this totally separate fraud with
21 Jason Galanis. Remember that? That was the so-called
22 Ballybunion fraud, where originally Wealth Assurance AG was
23 going to invest in this UK asset manager, and that deal didn't
24 work out, and so Jason Galanis said, no problem, I'll just make
25 an account for a new Ballybunion in Nevada, just send the money

I6Q7GAL2

Summation - Mr. Schwartz

1 there. And that's what Hugh Dunkerley did.

2 So that's what Hugh Dunkerley knew he was dealing with
3 at the time that he is transacting in that \$15 million, and
4 even he has no idea that it's moving in a big circle. And yet
5 they expect you to believe that Devon knew that. There is no
6 such evidence.

7 Now, let's talk about the second leg of that
8 transaction and also the second conspirator that you heard
9 from, and that was Francisco Martin.

10 You recall Mr. Martin -- the man who testified here
11 under a grant of absolute immunity from anything that he said;
12 it can't be used against him directly or indirectly; the
13 government promised not to arrest him if he came here, and let
14 him fly home to Spain where he can't be arrested -- what did he
15 tell you? He told you he committed crimes with Jason Galanis
16 but even he didn't know that Jason Galanis was stealing the
17 bond money. That's on slide 56.

18 "Q. At the time he was doing all of these things, that he was
19 signing on behalf of Private Equity Management, you did not
20 understand that Jason Galanis was going to steal any of the
21 bond money?

22 "A. At the time I did not know that, no."

23 Over and over he admitted to crimes to be sure, but
24 not that crime. Francisco Martin couldn't bring himself to say
25 that he knew that that bond money was stolen. And he was the

I6Q7GAL2

Summation - Mr. Schwartz

1 one who did the second leg of the transaction, that \$15
2 million; he did it from Thorsdale to Cliff Wolff.

3 And here is another example on slide 57 of where Jason
4 Galanis is ghost writing something for Francisco Martin to say.
5 He is ghost writing an e-mail to the lawyer Cliff Wolf saying
6 "Thorsdale wired your firm \$15 million. Thank you for your
7 assistance in helping to settle this investment for your
8 client."

9 So he is telling Cliff Wolff this is going to be an
10 investment on behalf of Thorsdale. That's the cover story.
11 This \$15 million, it's Thorsdale's \$15 million and it's going
12 to be invested in WLCC bonds, that's what Francisco Martin
13 tells the lawyer Cliff Wolff at Jason Galanis' instruction; and
14 I submit to you, that's what Devon Archer believed as well.

15 Now, I want to deal with one thing. The government
16 yesterday tried to suggest that Francisco Martin actually knew
17 that Jason Galanis was stealing this money, and they did that
18 with one very, very careful bit of testimony. It's on slide
19 58. The question is -- this is about the purchase of
20 Fondinvest:

21 "Q. What was your understanding of how Jason Galanis'
22 investment in Fondinvest was funded?

23 "A. My understanding was that it was coming from bond proceeds.

24 "Q. Where did you get that understanding from?

25 "A. There was no other income that was generated from Jason

I6Q7GAL2

Summation - Mr. Schwartz

1 Galanis' businesses."

2 Q. I submit to you that this was not true. This was Francisco
3 Martin -- a man who is desperately trying to please these
4 prosecutors so he does not get prosecuted -- trying to give
5 them what they want, which is, yes, he knew the money was being
6 stolen. And he can't quite bring himself to say that, but he
7 says, well, maybe I assumed it was bond money because there was
8 no other income that I was aware of from any of his businesses.

9 And I submit to you, first of all, you watched
10 Mr. Martin here. Mr. Martin was not a credible witness.
11 Mr. Martin was not honest with you, and I think you know that
12 simply from observing him and from your own common sense. And
13 we will talk about that more a little bit later. But this
14 particular piece of testimony is absolutely absurd.

15 And this jibes with something that Ms. Mermelstein
16 tried to argue yesterday too for a second, which was that
17 somehow Jason Galanis was poor and needed money. And if there
18 is one thing that we established over and over and over in this
19 case is that Jason Galanis was not a poor man. It may have all
20 been stolen money, but he was not a poor man. You heard that
21 over and over and over.

22 Slide 59. You saw his multi-million dollar home.
23 This is Francisco Martin, by the way, who knew that he had that
24 \$10 million house in Bel Air with maids and servants; he had
25 done millions of dollars in home improvements. You saw that

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Summation - Mr. Schwartz

1 house. I would like to play the video again, but I don't think
2 it was worth your time. That was a gorgeous house. No one
3 could think that Jason Galanis was poor. That is absurd. He
4 bought a \$10 million house in Tribeca again with stolen funds.
5 But he was displaying all of the trappings of wealth. He had
6 \$4 million of art on the wall, or so he said.

7 Look at Hugh Dunkerley who knew him well, his
8 testimony on slide 62: He appeared to be a wealthy and
9 successful person. He lived a very lavish life. He
10 occasionally flew first class, he took private planes, he had
11 two Bentleys.

12 Francisco Martin himself on slide 63 said he appeared
13 to be financially successful; they were talking about buying a
14 private plane; he had all of the trappings of success and
15 wealth. On page 64, he had family money, Thorsdale was the
16 Galanis family money.

17 It's ridiculous to suggest that anyone thought that
18 Jason Galanis was poor and had no other money. By the way, not
19 having \$15 million is not the same thing as being poor. Let's
20 be very clear about that. But Jason Galanis held himself out
21 as a man of enormous wealth so he could play with these people.

22 Let's talk about the super Bentley for a second.

23 MS. MERMELSTEIN: I apologize for interrupting, but
24 there has been repeated things not in evidence in this these
25 slides, and so we object to the use of the slides if that's

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Summation - Mr. Schwartz

1 going to continue.

2 THE COURT: Why don't you move on from this slide.
3 All right?

4 MR. SCHWARTZ: Sure.

5 To be clear --

6 THE COURT: You can read the testimony from the
7 transcript.

8 MR. SCHWARTZ: That's fine. We never found out what
9 the super Bentley looked like. We found out that Jason Galanis
10 had one. But why do I keep bringing it up?

11 MS. MERMELSTEIN: Your Honor, the slide is still up.

12 MR. SCHWARTZ: Can you move past this slide and past
13 this one.

14 MS. MERMELSTEIN: Same problem. Same problem, your
15 Honor.

16 MR. SCHWARTZ: No.

17 MS. MERMELSTEIN: Yes.

18 MR. SCHWARTZ: They saw all these people.

19 MS. MERMELSTEIN: These are not in evidence, your
20 Honor.

21 MR. SCHWARTZ: So the super Bentley, it's a real
22 point. OK? The reason I keep bringing it up is because
23 everyone remembered that. Right? You remember Mr. McMillan,
24 he said he had been to Jason Galanis' house once. But I asked
25 him what kind of car he drove, and he remembered. He

I6Q7GAL2

Summation - Mr. Schwartz

1 remembered it was a Bentley, it was a Bugatti or something like
2 that. Jason Galanis did that for a reason. Well, maybe he
3 liked driving those cars, but it's because he was showing off,
4 he was showing off the trappings of wealth, he was trying to
5 fit in with all of these people that he wanted to be like, he
6 wanted to be in business with. That's why he was doing this.

7 So, the super Bentley is not a joke; it is the way
8 that Jason Galanis was holding himself out to the world. So
9 the suggestion that he had no money and that, therefore, it
10 must have been stolen money that paid for those \$15 million in
11 bonds is absurd. But even so, Francisco Martin told you
12 explicitly with respect to that \$15 million that he had no idea
13 that it was stolen bond money.

14 So the two guys, the two supposed conspirators, who
15 you heard from in this courtroom, who handled the \$15 million
16 before it got to Rosemont Seneca Bohai, they both had no idea
17 where it was coming from or what it was used for.

18 Those two guys, those two guys who are knee deep in
19 different aspects of this fraud with Jason Galanis, those two
20 guys who are obstructing justice, who are making up documents,
21 who are lying to the F.B.I., and they're involved in all of
22 these side scams, they had no idea that \$15 million was being
23 recycled from the first bond issuance and being used to buy the
24 second. If they didn't know, Devon Archer didn't know. You
25 certainly haven't seen any evidence that suggests otherwise.

I6Q7GAL2

Summation - Mr. Schwartz

1 That's the fourth reasonable doubt. So, what's the fifth?

2 The fifth, you may have guessed, is the witnesses.

3 You heard from 16 government witnesses in this case. Of them
4 only three of those witnesses ever interacted with Mr. Archer
5 in any way, shape or form, and only one of them, Mary Moynihan,
6 the very last fact witness the government called in its case
7 before the summary witness, ever met Devon. She only met him
8 five times in her life. That's shocking.

9 Let's just talk about those three witnesses, the only
10 ones who ever met Devon. And, by the way, Mr. Touger was
11 correct yesterday. You didn't hear Ms. Mermelstein talk a lot
12 about the witnesses in her summation. She talked about
13 documents but not the witnesses, and that's because the
14 witnesses don't have a lot to say. They certainly don't have a
15 lot to say about Mr. Archer. But let's talk about the only
16 three who ever had any dealings with him.

17 Well, the first one we've already covered, and that
18 was Hugh Dunkerley. He told you that the only time he ever
19 dealt directly with Devon Archer was on conference calls. They
20 never had a one-on-one conversation, they never once spoke
21 about these bonds. In a scheme where there is supposed
22 coconspirators to steal the proceeds of these bonds, they never
23 had a discussion about the bonds, let alone about stealing the
24 proceeds of the bonds.

25 So let's talk about Mary Moynihan. That's the one

I6Q7GAL2

Summation - Mr. Schwartz

1 witness who ever actually met Devon. She was the lawyer for
2 the independent trustees to the Burnham Investors Trust.

3 Now, first things first, that's really a total side
4 show. Right? The Burnham Investors Trust has nothing to do
5 with the bonds in this case. She told you that clear as day.
6 The Burnham Investors Trust never invested in those WLCC bonds,
7 no one ever suggested that they would invest in them, they
8 didn't invest through Atlantic, they didn't invest through
9 Hughes, they were entirely separate mutual fund that were
10 managed through Burnham Asset Management.

11 In fact, Mary Moynihan didn't even hear about these
12 WLCC bonds until early 2016 when the SEC filed their civil
13 lawsuit against Atlantic Asset Management alleging those
14 conflicts of interest. That's the first time she even hears
15 about those WLCC bonds.

16 So the BIT board, that evidence has nothing to do with
17 the WLCC bonds. And it's important for you to understand that.
18 I'm going to go through this because Ms. Mermelstein said that
19 Devon lied to the BIT board. And he didn't, and you need to
20 understand that. But this evidence has nothing to do with
21 anything.

22 So, first of all, as I just said, the BIT board
23 discussions had nothing to do with the WLCC bonds, and in fact
24 they had nothing to do with any particular investment. But the
25 issue there was whether after Burnham Asset Management was

I6Q7GAL2

Summation - Mr. Schwartz

1 sold, the Burnham Investors Trust would continue to be a client
2 of Burnham Asset Management. And I raise that now because
3 there is a technical point I want you to be attuned to.

4 Tomorrow, when Judge Abrams instructs you on the law,
5 she is going to give you what is called the elements, meaning
6 the various things that have to be proven beyond a reasonable
7 doubt in order to convict any of the defendants. And one of
8 the elements of securities fraud is that whatever the scheme
9 was, whatever the lie was, it has to be in connection with the
10 purchase or sale of a security.

11 (Continued on next page)
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I6QJGAL3

Summation - Mr. Schwartz

1 That is the language I expect that Judge Abrams will
2 instruct you on tomorrow, and it has to be in connection with
3 the purchase or sale of a security.

4 Nothing that happened with the BIT Board was in
5 connection with the purchase or sale of a security. It is a
6 very technical point, but the law is a technical thing, and you
7 have to be aware of those things.

8 In fact, the fact that it was a technical thing really
9 runs through Ms. Moynihan's evidence, right, because the way
10 that Ms. Mermelstein portrayed it yesterday, the way she argued
11 the evidence made it seem as if Jason Galanis' presence in the
12 deal was being hidden. You recall she showed the letter that
13 referred to Thorsdale, and it said, tried to insinuate it was
14 somehow misleading because it didn't say right on there that
15 Thorsdale equals Jason Galanis. No.

16 There is no secret that Jason Galanis was in this
17 deal. Ms. Moynihan tells you that. On Slide 71, the BIT Board
18 know that all the way going back to 2013. Everyone knew he was
19 potentially involved in this deal, and the question was how was
20 he going to be involved in this deal, and what you see -- and I
21 am going to go through this -- what you see is that over the
22 course of really a year, lawyers for the BIT Board, lawyers for
23 the independent trustees, lawyers for COR Fund Advisors,
24 lawyers for Jon Burnham, they negotiated with one another, they
25 negotiate around a variety of things, right?

I6QJGAL3

Summation - Mr. Schwartz

1 You remember there is negotiations about whether that
2 guy Dan McClory is allowed to keep his 2 percent interest
3 because he filed a bankruptcy 18 years ago. They're
4 negotiating with that, every little thing, and that is fair.
5 That is what lawyers do. Trust me, that is fair. They have
6 those negotiations because they're representing their clients
7 and they have concerns.

8 One of the concerns that was articulated by the
9 independent trustees, by the BIT Board, was what role is Jason
10 Galanis going to have in this deal? It wasn't a secret that he
11 was in the deal. The question is what is his role going to be.

12 To fast forward to the end, the result was that Jason
13 Galanis gave up his ownership in COR Fund Advisors. He got
14 taken out of COR Fund Advisors, and then he was never, ever
15 part of this new entity BAM Holdings which acquired Burnham
16 Asset Management, which was the only entity that mattered to
17 the BIT Board in the first place.

18 So at the end of the day -- and I will go through this
19 in a little bit more detail -- Devon and COR Fund Advisors did
20 exactly what they promised to do, which is to take Jason
21 Galanis out of the deal in the very, very specific way they
22 promised to do, okay?

23 What they never promised to do, never, ever, and you
24 will not see this in all of the exchange of lawyers' letters,
25 let alone in the final representations which are the only

I6QJGAL3

Summation - Mr. Schwartz

1 representations the trustees relied upon to vote, there is
2 never a promise that Devon Archer is never going to have
3 anything to do with Jason Galanis, that Wealth Assurance is
4 never going to have anything to do with Jason Galanis. The BIT
5 Board asked for that at one point as part of the negotiations,
6 and COR Fund Advisors said no.

7 I told you in my opening statement, and I mean it now
8 more than ever, that is something that Devon Archer will regret
9 until the end of his life because they were exactly right. If
10 he had listened to them when they said stay away from Jason
11 Galanis, he wouldn't be sitting here today, but that's not what
12 happened, not because he was committing a massive fraud to
13 steal the proceeds of the WLCC bonds, but because he was trying
14 to close a business deal, and for right or for wrong -- as it
15 turns out, for wrong -- he didn't know it at the time, he
16 didn't want to cut out a person who had brought the deal to him
17 and was part of the deal from the beginning, but he never
18 promised to.

19 Let's look at exactly what was said. On Slide 73 you
20 see -- by the way, what we're looking at here are the minutes
21 of meetings of the BIT Board, and you'll recall when Ms.
22 Moynihan testified, she really didn't have or she wasn't
23 comfortable testifying about her independent memory of what
24 happened at these meetings. Every time I asked her, Ms.
25 Mermelstein asked what had happened at one of those meetings,

I6QJGAL3

Summation - Mr. Schwartz

1 if you recall, she went back to the minutes and she read the
2 minutes. That is fine, those minutes are in evidence and you
3 should look at them.

4 Those minutes, they're only summaries written by one
5 side of a hotly contested negotiation. She told you that she
6 took notes, and an associate took notes, but that they were
7 destroyed, and that is their practice. She told you there were
8 drafts of these minutes that were distributed to the members of
9 the board, and they were edited and finalized, and we haven't
10 seen those because those are attorney-client privilege.

11 So all we have is this final product, and you know
12 that this final product does not represent everything that was
13 said at that meeting. It represents what Mary Moynihan wanted
14 it to depict what happened at the meeting. In particular,
15 you'll recall there was one meeting, remember the email
16 Mr. Burnham was complaining, it lasted for six hours long, but
17 the minutes were less than a page long, right?

18 So those minutes are not word-for-word what happened.

19 I would ask you when you want to look at what was said
20 between COR Fund Advisors, BAM Holdings and the trustees, you
21 are much better off looking at the letters that were exchanged
22 which are the actual words of the parties than the minutes that
23 Mary Moynihan wrote.

24 But that said, here on Slide 73 we're looking at one
25 of those minutes, talking about concerns about the role of

I6QJGAL3

Summation - Mr. Schwartz

1 Jason Galanis. The minutes say that Mr. Archer responded that
2 he had been asked to remove Mr. Galanis from the deal and that
3 he had done so. That is exactly right, right?

4 You saw Mr. Fliegler testify, go to the next page,
5 that over the course of August, September into October, COR
6 Fund Advisor -- excuse me -- Thorsdale, which is Jason Galanis,
7 was removed as a member of BOE Capital and then removed as a
8 member of COR Fund Advisors. It was taken out of the deal,
9 right? They obeyed the promise to take him out of the
10 ownership structure.

11 Now, Ms. Mermelstein talked about the \$600,513.00 that
12 got paid to Thorsdale in connection with buying them out of the
13 deal. You recall that? She suggested this was a sham
14 transaction. This was not a sham transaction.

15 First of all, regardless of the money, Thorsdale
16 actually got taken out of the ownership structure, which is
17 what they promised to do, right? So when we're looking at
18 whether promises were kept, that's the important thing. What
19 COR Fund and what Devon Archer promised to do was get Jason
20 Galanis, get Thorsdale out of the ownership structure of the
21 Burnham Financial Group, and that is exactly what happened.

22 Now, you saw evidence, absolutely you saw evidence,
23 our witness put it on, showing the \$600,513.00 went from
24 Thorsdale to Rosemont Seneca Bohai, and then was used to buy
25 out Thorsdale's interest in CORFA.

I6QJGAL3

Summation - Mr. Schwartz

1 There is a suggestion by the government -- no
2 evidence, none, just a suggestion, just arguments that that was
3 somehow illegitimate. There is absolutely, absolutely no
4 evidence about why the transaction was done that way. They
5 imagine that that was done as a sham transaction in order to
6 fool someone, and I will explain to you in just two seconds why
7 that doesn't make any sense, why that was not the case.

8 Ms. Mermelstein is imagining that this was a sham
9 transaction, she is imagining conversations in which people
10 agreed to do the transaction this way for illicit purposes. I
11 can imagine things, too, I can imagine legitimate reasons to do
12 it this way. Maybe Jason Galanis and Thorsdale needed a tax
13 basis when they were doing a buy out of the CORFA securities
14 interest. You have no evidence on this. There are a million
15 different reasons why this transaction could have happened the
16 way it did, but the one thing we do know is that it didn't
17 happen for the reason that Ms. Mermelstein said, which was to
18 fool the BIT Board.

19 How do you know that it didn't happen for that reason?

20 Because if you flip the page, the BIT Board didn't
21 even know it. The BIT Board didn't even know that Thorsdale
22 had been taken out of CORFA, let alone that the money had moved
23 that way. The BIT Board, Mary Moynihan, they were simply
24 relying upon the representations that were made to them in
25 those letters. At that point, they weren't checking. She told

I6QJGAL3

Summation - Mr. Schwartz

1 you that. She had no idea that Thorsdale Fiduciary & Guaranty
2 Company was removed as a member of CORFA prior to the closing,
3 prior to the BIT Board approving the deal. She didn't know
4 that. So, obviously, it wasn't to fool them. They didn't even
5 know, right? So that wasn't the reason. That is the one thing
6 we know for sure.

7 Then we know when the BIT Board required, to the
8 extent they're able to require, that Burnham Asset Management
9 be owned by a new entity separate from COR Fund Advisors and
10 separate from Burnham Securities. That is exactly what Devon
11 did, and they created BAM Holdings, and Jason Galanis was never
12 a part of BAM Holdings.

13 At the end of the day, Burnham Asset Management, which
14 is where the Burnham Investors Trust money was managed, was
15 totally separated from CORFA, the entity that once upon a time
16 Jason Galanis was an investor in, okay? But what CORFA did not
17 promise to do, what Devon Archer did not promise to do was get
18 rid of Jason Galanis from his life entirely, okay?

19 So what was Jason Galanis' real relationship? He was
20 a consultant. You saw that over and over and over again, and
21 the BIT Board knew that and they were reminded of that over and
22 over and over again.

23 You see Government Exhibit 757. This is a letter
24 signed by Mr. Archer and Mr. Godfrey. Jason Galanis consults
25 with CORFA. You see Exhibit 4314 from Jon Burnham to the other

I6QJGAL3

Summation - Mr. Schwartz

1 trustees. Jason Galanis won't be associated with BFG, but he
2 may have a consulting arrangement with Devon personally.
3 Exhibit 4354, these were minutes of a BIT Board that the
4 government didn't introduce. We introduced it, and in those
5 minutes Mr. Burnham explained that Mr. Galanis operated as a
6 consultant, right?

7 You have other evidence. Mr. Dunkerley, on Page 78,
8 Jason Galanis was the consultant, right? Yes. That's what his
9 role was, and that was not forbidden.

10 Let's just take a second to actually look at the
11 representations, starting on Page 80. By the way, this is not
12 from Mr. Archer. This is from Mr. Godfrey. Mr. Archer is not
13 the only one who is making these reputations. Mr. Godfrey made
14 them, Jon Burnham made them, the lawyer Steve Weiss made them.
15 They all said the same thing, right? Those people are not
16 supposedly co-conspirators here.

17 This is Andrew Godfrey saying Jason Galanis has never
18 been and will not become an officer, employee, consultant,
19 director or member of the management of either Burnham
20 Financial Group, BAM or Burnham Securities, right?

21 So here they have the word "consultant," but it is
22 only consultant to those specific entities, right? I am going
23 to be very precise on this stuff, folks, I am going to be very,
24 very detail-oriented because this was done by lawyers and it is
25 very specific. Ms. Moynihan told you you have to read it that

I6QJGAL3

Summation - Mr. Schwartz

1 way, so when it says officer, employee, consultant, director of
2 Burnham Financial Group, BAM or Burnham Securities, those are
3 the only entities we should look at. It says that he won't
4 source any type of transaction, and he didn't. I will talk
5 about that in a little bit.

6 Now, the government agrees, by the way, that Jason
7 Galanis did not work at Burnham. Remember that's what they say
8 John Galanis was lying about. They say John Galanis was lying
9 when he told the WLCC that his son, Jason Galanis, worked at
10 Burnham Securities. They say that's a lie and they say Mr.
11 Archer is lying when he says he doesn't work there. They want
12 to have it both ways.

13 The truth is he didn't work there. The truth is he
14 was never an employee, he was never an investment banker, he
15 was never anyone who had an official role or an unofficial role
16 at Burnham Securities, Inc. or Burnham Asset Management. He
17 was throughout a consultant to COR Fund Advisors and COR Fund
18 Advisors' managing members on the big transaction, okay?

19 Let's look at the final set of representations, and
20 this is very, very lawyerly. For the avoidance of doubt, it is
21 our understanding that, dot, dot, dot, dot. Kindly confirm
22 this understanding. And the answer is, "confirmed."

23 Let's break it down. Let's look at what this
24 understanding is. Next slide. There are three parts to this.
25 This is in Defense Exhibit 4389.

I6QJGAL3

Summation - Mr. Schwartz

1 1. Mr. Galanis, Jason Galanis, will have no interest
2 of any kind, direct or indirect, in any of the Burnham entities
3 or their successors.

4 True, 100 percent true, all right? At that point,
5 remember this is going into the closing of the deal which is
6 finally approved on October 1st, 2014, Jason Galanis had been
7 removed as an investor, as a managing member from any role at
8 any of the Burnham entities, totally true, okay?

9 2. He will not source deals to the Burnham entities.

10 Totally true again. I think throughout this trial
11 you've only heard of two deals that Jason Galanis was involved
12 in at Burnham Securities. One was the WLCC bonds. Well, you
13 know those were around since early 2014. The first tranche
14 closes back in the summer of 2014. Those are all well under
15 way at the time that these representations are being made that
16 going forward he is not going to source deals.

17 The other one is Code Rebel, that IPO, right?

18 And there, too, the evidence is that that started way
19 early, and I won't bother showing you the exhibit, but you can
20 write it down if you want. It is Defense Exhibit 2209. That
21 shows that Jason Galanis informed Mr. Archer and others back in
22 early 2014 that that Code Rebel deal was something that was in
23 the works at Burnham. Other than that, I don't think we have
24 heard about a single deal that for Burnham, that Mr. Galanis
25 ever sourced. Totally true, all right?

I6QJGAL3

Summation - Mr. Schwartz

1 3. The Burnham entities will not invest with or in,
2 directly or indirectly, any business or enterprise in which
3 Mr. Galanis has any association, affiliation or investment.
4 100 percent true, right?

5 None of the Burnham entities, Burnham Financial Asset
6 Management, Burnham Securities, ever invested in a Jason
7 Galanis company. There is zero evidence of that. When you
8 actually look at what the promises were, you see that they were
9 exactly true.

10 Now, again it is unfortunate and in retrospect you
11 wish that it hadn't gotten to this point, wish Mr. Archer had
12 decided long ago to cut Jason out of his life entirely, but
13 that is not what happened. Making a mistake like that is not a
14 crime and it is certainly not proof, not proof beyond a
15 reasonable doubt, not proof of any kind that Devon Archer was
16 involved in a scheme to steal the proceeds of these bonds.

17 Everything, everything was true. Turn to Page 84.
18 This is one Ms. Mermelstein didn't talk about it yesterday, but
19 she highlighted it with the witness. Wealth Assurance may not
20 have any financial ties to BAM, BAM specifically.

21 Agreed and true. It doesn't say Burnham Financial
22 Group. It doesn't say Burnham Securities. There were
23 continued ties between Wealth Assurance, this is the old Wealth
24 Assurance, Wealth Assurance AG. There were continued ties
25 between Wealth Assurance AG and Burnham Securities. No one

I6QJGAL3

Summation - Mr. Schwartz

1 ever said otherwise. The representation was it won't have
2 financial ties to BAM, none, and there weren't.

3 You may see -- don't let them do this in rebuttal,
4 there is a letter that says may not have any financial ties to
5 Burnham. If they show you that one, write down what exhibit it
6 is, ask to look at it in the back. That is one of the ones
7 where Burnham is defined to mean Burnham Asset Management. It
8 is defined to mean BAM, okay?

9 When I'm done, by the way, and when Ms. Notari is
10 done, the government will have an opportunity to come back up
11 and argue again, and I don't know who is going to speak to you.
12 They're all excellent lawyers. Mr. Quigley hasn't gone yet.
13 Maybe it is him. If it is him, he is an excellent lawyer and
14 he has a great voice. Lawyers are trained to make arguments,
15 and he'll make an argument, or whoever does it will make an
16 argument and respond to what I say, what Mr. Touger said and
17 what Ms. Notari says later today or tomorrow. He will have
18 responses to everything, but make sure, make sure you
19 scrutinize it.

20 The same thing I just asked you to do, go look at the
21 evidence, make sure that they're actually responding to
22 arguments. If they show you that one, Wealth Assurance won't
23 have financial ties to Burnham, you ask to see it because
24 Burnham means BAM, Burnham Asset Management.

25 Finally on this point, Slide 86, it was clear as day,

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Summation - Mr. Schwartz

1 it was clear as day that these were specific representations
2 and that Jason Galanis was not being totally severed. You even
3 see this email up top, this is from the Lawyer Steve Weiss
4 proposing that they would set up a separate investment
5 committee to evaluate any proposals or investment opportunities
6 that had any connection whatsoever to Jason Galanis.

7 You see in Exhibit 2221 what Mr. Archer was thinking,
8 what he is saying to Jason Galanis. I sent a letter back to
9 the BIT yesterday saying I can't deny doing business with you,
10 basically take it or leave it. That's his state of mind. That
11 is his thinking.

12 Now, the government yesterday tried to argue to you
13 that that was somehow a lie from Mr. Archer to Jason Galanis,
14 but what I've just walked you through is that is exactly true,
15 there was no representation ever, ever that Jason Galanis would
16 have nothing to do with COR Fund Advisors, nothing to do with
17 Devon Archer, right? If they try to show you otherwise, I want
18 you to read that representation the way a lawyer would, read it
19 very carefully.

20 That is Mary Moynihan, the only other witness --
21 sorry, your Honor.

22 THE COURT: Yes?

23 MR. SCHWARTZ: When is your Honor intending to take an
24 afternoon break so I can plan?

25 THE COURT: It is really up to you. If anyone needs

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Summation - Mr. Schwartz

1 to use the restroom, just raise your hand right and we can take
2 a short break. It is up to you, Mr. Schwartz. How much longer
3 do you think you have?

4 MR. SCHWARTZ: A little bit.

5 THE COURT: All right.

6 MR. SCHWARTZ: Are you all okay?

7 JUROR: I need a break.

8 THE COURT: Why don't we take a short break now.

9 (Jury excused)

10 MR. SCHWARTZ: I am more than halfway through. I
11 don't know if I am an hour and 45 minutes more.

12 THE COURT: Let's just keep this break short.

13 (Recess)

14 THE COURT: Is everyone ready?

15 Ms. Notari, do you have a sense of timing how long
16 your summation is?

17 MS. NOTARI: At least two hours.

18 THE COURT: So it might well be we don't get to it
19 today. We'll just see what time it is, but given the hour now,
20 it seems unlikely.

21 (Jury present)

22 THE COURT: Everyone can be seated. Thank you.

23 MR. SCHWARTZ: Okay, good afternoon again, ladies and
24 gentlemen. Now, we were talking about the only three witnesses
25 in this case who had any kind of relationship to Devon. We

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Summation - Mr. Schwartz

1 went through Ms. Moynihan, going through Mr. Dunkerley, and the
2 last one is Catharine Driever, and she was one of Devon's
3 bankers. She told you that she never met Mr. Archer in person
4 and spoke to him only a handful of times. Principally you
5 remember sometimes wire transfers were over a certain threshold
6 and they had to get voice confirmation. Mostly she dealt with
7 Mr. Montazi.

8 The government says that Devon lied to Morgan Stanley,
9 he also lied to Deutsche Bank in connection with their
10 custodying of the WLCC bonds. I want to look at what actually
11 happened.

12 By the way, this testimony also, on that technical
13 legal point, was not in connection with the purchase or sale of
14 a security. In fact, I asked Ms. Driever that exact question,
15 and she agreed it was not in connection with the purchase or
16 sale of a security. It was in connection with holding a
17 security, custody of a security. Just keep that technical
18 point in mind, but again I want to go through that, the big
19 point, which is the government says that Mr. Archer lied to
20 Morgan Stanley.

21 Let's look at what he actually said and what he didn't
22 say. Go to Slide 88. This is what he actually said. The
23 question that was put to him was how was the \$15 million
24 generated that was used to purchase the bonds? And the answer
25 was \$15 million was generated through sale of real estate.

I6QJGAL3

Summation - Mr. Schwartz

1 The question on the first version of the client
2 representation letter, the version that Devon actually signed,
3 said method of acquisition, purchase. Manner of payment, wire
4 transfer. Well, on the form those statements are obviously
5 true. It was, in fact, a purchase of a security and the manner
6 of payment was, in fact, a wire transfer.

7 The \$15 million, of course, was not true, right?

8 We now know, because we have seen the movie, we now
9 know that that \$15 million came from the first WLCC bond
10 issuance, and Jason Galanis and Hugh Dunkerley transferred it
11 from Wealth Assurance Private Clients to Thorsdale, and then he
12 had Francisco Martin transfer it from Thorsdale to Cliff Wolff.
13 Then he had Cliff Wolff transfer it from his own escrow account
14 to Devon. That is what we know now. That is not what Devon
15 knew then, and I will talk about that in a second.

16 First of all, I want to talk about what Devon didn't
17 say to Morgan Stanley because they're trying to put a lot of
18 weight on that, what he simply did not say. By the way, Slide
19 89 says the exact same thing to Deutsche Bank. There is no
20 question he said those things. Those are emails that are from
21 his account.

22 While there is evidence, and we'll talk about it in
23 little bit, that said Momtazi, his assistant, used his email
24 account and sent emails from that email account, you saw his
25 wife said he signed that first version of the client

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Summation - Mr. Schwartz

1 representation letter, and that email came from his account.

2 No mistake about that, right?

3 What the government is trying to tag him with is the
4 second version of the client representation letter. You recall
5 that? That's the one that Catharine Driever filled out in her
6 own handwriting and sent it to Seb Momtazi and got signed.
7 That is the one Ms. Mermelstein put up on the screen yesterday
8 and she said this alone convicts Devon Archer, this alone is
9 proof beyond a reasonable doubt. That is nonsense, and I will
10 tell you why.

11 There is nothing that was a lie in that letter --
12 excuse me -- in the letter that Devon actually signed. So
13 let's look at what he actually said.

14 Page 90, on October 7th, when Ms. Driever is asking
15 these questions, Devon's response at the bottom of the page,
16 \$15 million was generated through the sale of real estate, and
17 she responds at 7:30 pm, just a few more follow-up questions,
18 all right? So there is some follow-up questions from
19 compliance, the follow-up questions having nothing to do about
20 this, but she is asking follow-up questions.

21 That is at 7:30 pm.

22 Then at 7:56 pm, 26 minutes later, she writes an email
23 to one of her colleagues within Morgan Stanley, and it says
24 under Wakpamni, the funds used to purchase the bonds (15
25 million) were from real estate sales through his business,

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Summation - Mr. Schwartz

1 Rosemont Seneca Bohai.

2 Devon did not say that. Devon said the money was
3 generated from real estate. He did not say it came from
4 Rosemont Seneca Bohai. Catharine Driever added that, right?
5 And Ms. Mermelstein yesterday, she tried to convince you she
6 only did that after speaking to Devon Archer on the phone and
7 getting that information from him in that 26 minute window
8 between 7:30 and 7:56 pm.

9 I asked her question after question about this, right?

10 It starts on Page 92. She tried to say, as Ms.
11 Mermelstein said yesterday, that it was her practice to write
12 only what she was told, but when she was pressed, she couldn't
13 remember having any such conversation. The next page. And
14 even if she did have such a conversation, she couldn't tell us
15 that it was with Devon.

16 The next page. I went back to this again. She can't
17 remember, but the things that she put down in her email and
18 ultimately that she wrote in her handwriting on the second
19 version of that form, they were not in the email that Devon
20 sent, and that is all that is in evidence.

21 Look, this is not a vast Morgan Stanley conspiracy
22 against Devon Archer. This is an honest mistake. Look at the
23 next page. Catharine Driever knew that Devon Archer runs a
24 real estate private equity group. This is her in connection
25 with these bonds writing a request to her boss, actually for

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Summation - Mr. Schwartz

1 her boss to sign to get an exception to their usual rule you
2 have to be a customer for a certain length of time to have
3 unregistered securities, and she says Devon Archer holds a
4 mortgage with the banking group, he runs a real estate private
5 equity group.

6 And so Catharine Driever did what normal people do
7 trying to be helpful, not trying to do anything wrong, and she
8 put two and two together and took the sort of sentence fragment
9 Devon had emailed over from real estate sales and she turns it
10 into what she thought was saying the exact same thing. She
11 turns it into her own language, that the funds used to purchase
12 the bonds were from real estate sales through his business
13 Rosemont Seneca Bohai.

14 That is 3:45. That is her email internally at Morgan
15 Stanley. And then at 3:49 she uses the exact same language
16 word-for-word except she writes it in Devon's voice and she
17 puts it onto that client form. Those are the words. Those are
18 not Devon's words.

19 Then the signature on that one, Dr. Archer tells you
20 that Sebastian Momtazi is signing Devon's signature. Again
21 there is nothing wrong with that. We're not accusing Mr.
22 Momtazi of doing anything wrong. He is a personal assistant.
23 His job is to facilitate things. You saw in the emails, I
24 won't read them all to you, that Mr. Momtazi was actually in
25 close, close contact with Jason Galanis, organizing the

I6QJGAL3

Summation - Mr. Schwartz

1 transfer of these bonds. This was his project. He was
2 spearheading the logistics of it, and I am sure he thought he
3 was being helpful here. That is certainly fair for you to
4 conclude he was being helpful here. The fact remains he signed
5 Devon's signature on the second version of the client
6 representation letter. In everyday life, that is fine, right?
7 That is the bank is trying to be helpful.

8 Mr. Momtazi is trying to be helpful. If this were a
9 civil lawsuit, you might say the buck stops here, Mr. Archer,
10 he was the boss of Rosemont Seneca Bohai, he has to be held
11 responsible even though those were not his words. That is not
12 what we're doing here, right? The Judge is going to instruct
13 you tomorrow on the law, but you can only hold Mr. Archer
14 liable for the things that he did, or his own intentions.

15 So what did Mr. Archer think? Well, first things
16 first. You don't have any evidence one way or the other, no
17 evidence that anyone spoke to Mr. Archer and told him this is
18 where the money came from. There is not a single email that
19 says that, no witness testified to it. There is a total
20 absence of evidence on that point. I submit to you that is
21 reasonable doubt right there.

22 There is certainly no communication in which anyone
23 says well, it is \$15 million misappropriated from the first
24 bond issuance. As we just went through, the other people that
25 were handling that \$15 million, they had no idea that the money

I6QJGAL3

Summation - Mr. Schwartz

1 was being transacted in that way. They had no idea it was
2 stolen money going in a big, big circle, right?

3 What is the evidence that we do have? Well, the
4 evidence that you do have is that Mr. Archer said twice, in
5 response to two questions in two different banks, where was
6 this money generated from? And he said real estate sales. So
7 what do we know about Jason Galanis, where the money came from
8 and his sources of wealth and what do we know about Rosemont
9 Seneca Bohai?

10 First of all, let's start with Rosemont Seneca Bohai,
11 Page 99. Catharine Driever tells you Rosemont Seneca Bohai was
12 a capital management firm. It was managing people's money, and
13 you saw that when you looked at some of the bank statements for
14 Rosemont Seneca Bohai, you saw there were all sorts of other
15 investments there, there were payments, a number of payments we
16 looked at to Mr. Biden who you heard was Mr. Archer's business
17 partner.

18 This is managing capital on behalf of other people, or
19 this is different from the other entities and accounts that Mr.
20 Archer holds that you heard about. It is not the Archer
21 Diversified account, it is not his personal account, it is a
22 business account of Rosemont Seneca Bohai, a capital management
23 firm.

24 What else do you know? You know that the lawyer,
25 Cliff Wolff, we looked at this before, but let's look at it

I6QJGAL3

Summation - Mr. Schwartz

1 again, Slide 100, who handles the transaction that goes
2 directly to Rosemont Seneca Bohai, he's told that it is going
3 to be an investment. Thank you for your assistance in helping
4 to settle this investment for your client. This is \$15 million
5 of Jason Galanis' money that is going to be invested in these
6 WLCC bonds.

7 Finally, you know that the evidence is overwhelming
8 that Jason Galanis had significant, significant real estate
9 investments, and Ms. Mermelstein tried to sort of make fun of
10 this yesterday. She said oh, it is only two emails from a long
11 time ago. Not so, not so. Look through the record. These are
12 some of them. I will tell you about a few more, right?

13 Page 101, Francisco Martin handling real estate
14 investments on behalf of Jason Galanis. You knew that Jason
15 Galanis had told the hotel, a real estate investment in Miami,
16 true? Yes.

17 Page 102, Amman Resorts, a large hotel company,
18 between 500 million and \$1 billion in assets, Jason Galanis
19 along with a man named Omar Amant was going to purchase Amman
20 Resorts, correct? That was their plan. Their plan was to
21 purchase it out of bankruptcy.

22 This is the thing Hugh Dunkerley pled guilty to
23 because he commits a bankruptcy fraud in connection with this
24 thing, but the real estate investment is real and that was a
25 real estate deal that Jason Galanis had arranged, true.

I6QJGAL3

Summation - Mr. Schwartz

1 Yesterday you saw Mr. Galanis being presented and
2 forwarded to Devon substantial real estate investment
3 opportunities, right? A great and immediate Maui hotel
4 investment opportunity. And you see on the next page we read
5 to you this is an opportunity to buy in fee simple, meaning buy
6 the real estate of a Ritz Carlton Hotel in Maui, in Hawaii.

7 We read another one -- I won't show it to you --
8 yesterday in which Dr. Rory Knight had forwarded some
9 information about a real estate deal, and Jason Galanis replied
10 "I'm all over the real estate." Do you remember that one? You
11 can ask for that.

12 Do you remember we also saw in the texts between Tim
13 Anderson and Yanni Galanis, Yanni was bragging about the family
14 real estate investments. Do you remember that? He even showed
15 a picture of one of those to Tim Anderson.

16 Jason Galanis was holding himself out once again as
17 being extraordinarily wealthy, and a good deal of that wealth
18 came from real estate investments. So when Devon wrote the
19 money for the \$15 million was generated from real estate, he
20 believed that was true.

21 Now, the government says no, no, no, no, we know what
22 that question is asking. That question is not asking where was
23 that money generated from, even though that is literally the
24 question that Catharine Driever asked, it is really asking how
25 did you get the money. The way he was supposed to answer that

I6QJGAL3

Summation - Mr. Schwartz

1 was I got that money from Jason Galanis. That is what the
2 government faults Devon for, that is what the government says
3 is proof beyond a reasonable doubt that he did not read that
4 question the way the government now years later and after doing
5 all this work to figure out this fraud, they say that's the way
6 that question is supposed to be read. I submit to you that is
7 not right.

8 First of all, the question was asked, "How was the
9 money generated?" That means where did it come from
10 originally, and that's the question that Devon answered.

11 Maybe there is some different right answer, right? I
12 am not sure if you have been here long enough to get jury
13 checks on your fees. There is a fee, it is very, very small
14 from being a juror, something like \$38 a day. At the end of
15 the day when you get that check, if someone were to ask you
16 where did you get that money? How was it generated? There are
17 like 10 different right answers to that question, right? You
18 could say I got it because I sat as a juror in a federal trial
19 for a month when I would have rather been enjoying the weather.

20 You could say I got it in a check. You could say it's
21 taxpayer dollars. You could say I got it from the U.S.
22 Treasury, who is going to be the payor of the check. There are
23 10 other answers to the question, "where did that money come
24 from?" They're all accurate answers.

25 The answer that Devon gave on the form, the one he

I6QJGAL3

Summation - Mr. Schwartz

1 actually filled out, that is an accurate answer. The
2 government now says that is not the answer we want. I
3 understand in hindsight they say that, but again put yourself
4 in a movie at the time, again it has nothing to do with buying
5 or selling these bonds, they're trying to help move at Morgan
6 Stanley. Morgan Stanley says where did the money come from?
7 It is an investment on behalf of someone else, on behalf of
8 Thorsdale and Jason Galanis. When they ask where is the money
9 from, this is where Jason Galanis got the money.

10 It turns out to be wrong, but being wrong is not the
11 same thing as lying. Remember I talked to you little bit in my
12 opening statement about the difference between a mistake and a
13 lie, right? The weatherman is not lying when he says it is
14 going to be sunny, and it rains. It turns out we now know
15 after the government has done all this work that Devon was
16 wrong and that money was money that Jason Galanis had stolen,
17 but it wasn't a lie.

18 That is an important, important distinction for you to
19 understand. You saw that, you saw that difference right here
20 in this courtroom. There were some witnesses, I submit to you,
21 that were not credible like Mr. Martin. I think he was -- I
22 think you know he was not honest with you about everything,
23 just as he was for years and years not honest with the FBI,
24 right? There were other witnesses that were simply mistaken.

25 The best example of that is the government's own law

I6QJGAL3

Summation - Mr. Schwartz

1 enforcement agent, Agent Kendall. She was the last witness
2 that they called, and that was a scrupulously honest witness,
3 right? You could see she was physically in pain at having to
4 admit that she had made all these mistakes.

5 She didn't want to do it, right? And we pointed out
6 time after time after time that there were mistakes in the work
7 that she had done, and she looked at the evidence and she
8 looked at her work and she looked at the evidence, and she
9 admitted that there were mistakes. Those were mistakes. They
10 weren't lies. She didn't lie. She wasn't trying to trick you.

11 Now, some of the things that were on her charts, and
12 we'll talk about them in little bit later, were misleading.
13 Someone told her to do it that way. Those people may have been
14 trying to trick you little bit, but Agent Kendall was entirely
15 honest in her testimony. She was mistaken, but she didn't lie.
16 I submit to you that when Devon answered those questions twice
17 the same way, and he said real estate, he was mistaken, as it
18 turns out, but he didn't lie.

19 There is zero evidence to the contrary, zero evidence
20 that Devon knew that that \$15 million came from stolen bond
21 proceeds, zero evidence that even the people that transacted or
22 handled that money before knew the full story. The fact that
23 the government says that that alone supplies proof of
24 reasonable doubt is remarkable to me.

25 By the way, ask yourself what does that evidence even

I6QJGAL3

Summation - Mr. Schwartz

1 prove? The government put on a witness, Francisco Martin, who
2 told you he lied to banks, right? This is Slide 105. He lied
3 to banks. He said that he listed himself as the owner and a
4 managing director of Thorsdale on certain brokerage accounts
5 not because he was helping Jason Galanis steal the bond money.
6 He didn't know Jason Galanis was stealing the bond money. It
7 is not because he was trying to steal money from Jason Galanis,
8 of course. He is one of Jason Galanis' cronies, right?

9 So ask yourself what even does the government's
10 evidence prove? The government says that this evidence, this
11 one form from Morgan Stanley by itself is proof beyond a
12 reasonable doubt. I suggest to you that is ridiculous.

13 Tomorrow Judge Abrams is going to give you the
14 instructions on the law, and she is going to tell you that a
15 reasonable doubt is a doubt founded in reason and arising out
16 of the evidence in the case or the lack of evidence.

17 If you have a doubt, if it is founded in reason, if it
18 is based on evidence or the lack of evidence, it is your duty
19 to find Devon not guilty. So what is a reasonable doubt?

20 I expect tomorrow Judge Abrams will tell you a
21 reasonable doubt is one that would cause you to hesitate before
22 acting in matters of importance to yourself. Think about what
23 that really means for a second, hesitate before acting in
24 matters of importance to yourself.

25 Would you bet your house that Francisco Martin was

I6QJGAL3

Summation - Mr. Schwartz

1 telling the truth?

2 Would you give up something that was near and dear to
3 you on the basis of that one piece of paper, that Morgan
4 Stanley form when there is zero evidence that Devon knew that
5 that money came from the bonds?

6 That's what proof beyond a reasonable doubt is. It is
7 an enormously high standard. It is supposed to be an
8 enormously high standard, and the government has not come close
9 to meeting it.

10 What is the sixth reasonable doubt? I'll do this one
11 quickly. It is what happened after things started to fall
12 apart. Jason Galanis gets arrested in late September 2015. In
13 early October 2015, the SEC starts shooting out subpoenas. The
14 businesses are in crisis and everything is falling apart. Look
15 at what Devon Archer does and then look at what everyone else
16 does.

17 What do the real criminals do? You heard it. You
18 heard from one of them, Hugh Dunkerley. Hugh Dunkerley told
19 you that he got together and he went to Jason Galanis' house
20 and they got together and they started plotting on these white
21 boards how they were going to get out of this mess. They're
22 drawing plans on the white board about how they're going to
23 fool the SEC, going to fool the FBI, somehow they're going to
24 get themselves out of this mess. That is what Hugh Dunkerley
25 and Jason Galanis do, and then they do it. They make fake

I6QJGAL3

Summation - Mr. Schwartz

1 documents, fake companies, fake account statements, all sorts
2 of stuff.

3 Hugh Dunkerley, the witness that they embrace, pled
4 guilty to obstruction of justice based on the creation and
5 submission of false documents by himself and Jason Galanis.
6 Gary Hirst helped. Francisco Martin created Calvert. Those
7 are the people who are creating false documents and trying to
8 fool the government when things start to come down.

9 What else do they do? They're sending encrypted,
10 self-destructing messages on something called the WICKR to one
11 another.

12 Look, by the way, that is not illegal, right? Privacy
13 is important, and you can send messages using secure apps and
14 self-destructing apps, and there is nothing wrong with that.
15 That is not what these guys were doing. These guys were not
16 being protective of their privacy. They were trying to evade
17 the FBI and the SEC and the government from doing what they
18 have done here, which is to get all of their criminal
19 communications with one another.

20 Again it is Martin, Dunkerley and Hirst all scheming
21 with one another. We don't know exactly what they're saying
22 because those messages self-destructed, but you heard Hugh
23 Dunkerley testify about it, and even at the moment that
24 Francisco Martin goes into the Starbucks, you remember, for his
25 meeting with the FBI, he meets them alone without a lawyer at a

I6QJGAL3

Summation - Mr. Schwartz

1 Starbucks in California. He is WICKRing with Jason Galanis
2 right beforehand and he is reporting to him right afterwards.

3 (Continued on next page)

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I6Q7GAL4

Summation - Mr. Schwartz

1 It's part of their plot to cover up their crimes. Devon was
2 not part of any of it; he wasn't there on the white board; he
3 wasn't on Wickr; he is not involved in any fake documents.

4 And we will talk about that for a second, because
5 Ms. Mermelstein made a truly impressive argument about that
6 yesterday. So let's talk about Calvert.

7 Calvert is the company that is totally 100 percent
8 fake. Right? Francisco Martin creates it after this all
9 starts to happen in October 2015, and he and Jason Galanis
10 start backdating a bunch of stuff, and then they give all those
11 fake backdated agreements to the SEC and to the government to
12 cover their tracks.

13 There is nothing connecting Devon Archer to Calvert
14 except for this one e-mail. Right? There is one e-mail, I'm
15 going to show it to you, I'm going to be very upfront about it.
16 There is an e-mail from November 25, 2015, it's Government
17 Exhibit 2119, between Mr. Archer and Mr. Waddington -- who is
18 someone at Wealth Assurance, I believe -- and they are talking
19 about at this point what are we going to do with the WLCC bonds
20 that VL Assurance holds. Remember, some of those bonds ended
21 up at something called VL Assurance. And what Devon said is I
22 want to share some information -- which is information that had
23 been forwarded to him by other traders -- even though these are
24 going to be replaced/returned to Calvert. OK? And then later
25 on Mr. Waddington agrees with him, and Devon says again these

I6Q7GAL4

Summation - Mr. Schwartz

1 bonds should go back to their beneficial owner.

2 That's it. Right? So we just went through the fact
3 that Rosemont Seneca Bohai was a capital management firm that
4 had made this investment on behalf of someone else. Right? So
5 they need to return these bonds now that the businesses are
6 being wound down, and someone tells Devon, well, they should go
7 to Calvert. That's literally the only thing you can conclude
8 from this document.

9 Calvert -- as Mr. Dunkerley tells you on the next
10 slide -- its sole purpose was to deceive people. And the only
11 people that he ever discussed that with were Gary Hirst and
12 Jason Galanis. Not even Francisco Martin, who made up Calvert,
13 whose brother was the supposed operator of Calvert, knew that
14 was the purpose.

15 But the government wants you to conclude based on that
16 one e-mail that somehow Devon Archer was brought into the loop
17 and he knew that Calvert was the sinister thing, instead of he
18 was one of the many, many people that were deceived by the sole
19 purpose of Calvert. Devon did not sign any Calvert documents;
20 he didn't rely on any Calvert documents.

21 And if you go to slide 113, the government makes a
22 truly breathtaking argument -- this is Ms. Mermelstein
23 yesterday -- "Devon Archer kept his hands a little cleaner. He
24 didn't submit the fake Calvert documents himself. Dunkerley
25 did it for him. Look at Government Exhibit 1577."

I6Q7GAL4

Summation - Mr. Schwartz

1 So let's break this down for just a second. What is
2 Ms. Mermelstein arguing? We don't have any evidence connecting
3 Devon Archer to Calvert, so I'm going to spin that and say the
4 fact that we have no evidence is actually evidence itself that
5 he's guilty because he kept his fingerprints off of this, he
6 kept his hands a little bit cleaner.

7 What is the evidence of that? What is the proof that
8 he kept his hands a little bit cleaner? What is the evidence
9 that Dunkerley did it for him? Dunkerley never discussed
10 Calvert with Devon Archer. We just saw that testimony.
11 Dunkerley never talked to Archer about Calvert.

12 There is a reason why some of the Calvert documents
13 have all sorts of signatures on them, and the one that they
14 have to make up for Rosemont Seneca Bohai only has Dunkerley's
15 signature.

16 But you remember this one? I'm not going to bother to
17 show it to you. But you remember Dunkerley first is told by
18 Jason Galanis that Rosemont Seneca Bohai is this Chinese money,
19 and then later on they create this fake Calvert document that's
20 the exact opposite and says that Thorsdale and Calvert are
21 holding Chinese money that's being invested into Rosemont
22 Seneca Bohai? It's the exact opposite of the original lie Hugh
23 Dunkerley tells. Only Dunkerley signs that document, and he
24 testifies he never discussed Calvert and he never discussed
25 that document, he never discussed that document with Devon

I6Q7GAL4

Summation - Mr. Schwartz

1 Archer. OK? It's on slide 114 as well.

2 What else happens after Jason is arrested, Jason
3 Galanis is arrested and things start to come down? Well,
4 Ms. Mermelstein yesterday talked a little bit about Jason
5 Galanis' new fake e-mail address legal@colarisventures? She
6 did it really quickly, but it was another just false argument.
7 She showed you a few Colaris e-mails, and she said this: "You
8 can see a bit more of Archer and Cooney's involvement in the
9 cover-up when you take a look Colaris Ventures e-mails ... it
10 is not a good club."

11 Then she read three of the names on those e-mails but
12 not all of the names on those e-mails. It's not a bad club.
13 Look at Government Exhibit 1453, October 2, 2015 from
14 legal@colarisventures to Rashaun Williams -- this is the
15 Goldman Sachs guy who worked at Bonwick -- Devin Wicker -- also
16 from Bonwick -- Jason Sugarman. It's not a bad club to be in.

17 And, by the way, this is the only document -- the only
18 one -- Government Exhibit is 1453, that puts Devon Archer in
19 the so-called Colaris Ventures club. This is an e-mail that
20 legal@colarisventures sends to Devon Archer and Andrew Godfrey.

21 He received an e-mail. OK. You can't stop people
22 from sending you e-mails. You can't stop people from sending
23 you e-mails. There is no response to this. There is no Devon
24 Archer talking to whoever legal@colarisventures is. There is
25 not even evidence that he had any idea this was from Jason

I6Q7GAL4

Summation - Mr. Schwartz

1 Galanis as opposed to some spam from legal@colarisventures.

2 This is the evidence that they are relying upon --
3 that they want you to rely upon -- to say that Devon Archer was
4 part of a cover-up? It's not responsible.

5 Look at what really happened, what Devon Archer really
6 did after Jason Galanis was arrested and after things start to
7 fall apart: He met the BIT board again, and again, and again,
8 and he tried to answer all of their questions.

9 You see what he tells Jon Burnham on the day that the
10 arrest is announced: "a surprise to both of us" -- meaning him
11 and Andrew Godfrey. "We had no idea." And that's a hundred
12 percent true. The judge instructed you that's a hundred
13 percent true. The judge instructed you that there is no
14 evidence that Devon Archer knew about the conduct underlying
15 that arrest or that the investigation existed. That was true
16 what Mr. Archer said. He said the same thing to the BIT board.
17 "He stated he had been shocked by the development" A hundred
18 percent true. It's not in dispute. "And he thanked the
19 independent trustees" He should have listened to them. He
20 thanked them; they were right. "And he said" -- and he was a
21 hundred percent true about this too -- "that he had been duped
22 in a sophisticated con" And they kept asking him questions,
23 and he kept going back again and again and again to the BIT
24 board. Now, remember, they have already approved the
25 transaction. He is going in because he is trying to save the

I6Q7GAL4

Summation - Mr. Schwartz

1 business that he's built.

2 Everyone else has run for the hills, right? Galanis
3 and Dunkerley, they are doing coke up on the white boards.
4 Francisco Martin is having frappuccino with the F.B.I. lying to
5 them, and Devon Archer is in a board meeting with the
6 independent trustees, answering all of their questions, and
7 honestly taking their frustration.

8 And you've seen that in your everyday life. Right?
9 Sometimes you just kind of get angry at the person in front of
10 you even though they're not the ones to blame. Have you ever
11 been at the airport and had your flight canceled, and there is
12 always someone who just kind of tees off at the person at the
13 ticket counter? The person can't make that flight take off,
14 but they are the person that's in front of you.

15 Devon Archer showed up, and he went to those meetings,
16 and he took honestly the false accusations from the BIT board.
17 And you saw that. At that first -- excuse me -- at that final
18 BIT board meeting, this is February 2016, this is after the SEC
19 has sued Atlantic Asset Management over the WLCC bonds. The
20 BIT board is not saying get out of here; they're not saying
21 we're leaving Burnham Asset Management. But they told you, Ms.
22 Moynihan was very clear they hadn't made that decision even in
23 February of 2016. They're still willing to do business with
24 Devon Archer because they know that he had nothing to do with
25 that. But Ms. Moynihan said, look, I read this complaint, and

I6Q7GAL4

Summation - Mr. Schwartz

1 it seems to me that you're one of these unnamed persons here.
2 And Mr. Archer said, no, I'm not. And even the government
3 agrees. That's a stipulation at the bottom. "Devon Archer is
4 not one of the unnamed individuals discussed in that lawsuit."
5 That is undisputed. That was just a false accusation by Ms.
6 Moynihan.

7 Mr. Archer showed up, he tried to repair these
8 businesses, he tried to answer the questions from frustrated
9 investors. You saw he sent some lists and Andrew Godfrey sent
10 some lists of things they would have to deal with in the
11 aftermath of all of these problems; they were going to have to
12 find new funding. And, lo and behold, page 115, Mr. Archer did
13 find new funding; he went out and he found new investors to
14 bring into Burnham Asset Management. He is trying to save the
15 business. He is not trying to cover up a crime. He was always
16 in this to save the business, and that's what he was trying to
17 do right up until the last moments. Right? Right up until the
18 last moment.

19 Again here is Ms. Moynihan's testimony on slide 120.
20 Even in February of 2016 the independent trustees had not
21 decided to move their money. They trusted Devon even after all
22 the facts had come out.

23 And the government said, well, he lied when he said he
24 had nothing to do with what was in that lawsuit. First of all,
25 you don't have a copy of the lawsuit, but we have agreed -- and

I6Q7GAL4

Summation - Mr. Schwartz

1 it's in that same stipulation -- that it had to do with only
2 the first and the third bond issuances. Well, we just went
3 through the fact that Devon Archer had nothing to do with the
4 first and the third bond issuances. Yes, he knew they existed;
5 he was kept broadly in the loop -- we will talk about that a
6 little bit later. That's not having anything to do with them.

7 His answer was accurate, and his specific answer --
8 which is that he was not one of those unnamed people in that
9 complaint -- the government agrees is a hundred percent
10 accurate. That's the sixth reasonable doubt.

11 The seventh reasonable doubt is the government's own
12 investigation in this case. Now, look, I have all the respect
13 in the world for these three lawyers and for the people that
14 work with them, but I think that you have seen that this
15 investigation has been sloppy. It started late, and the
16 government has repeatedly put evidence before you in this case
17 that was false, and yesterday you heard arguments from the
18 government that asked you to draw totally false conclusions.
19 Right?

20 This morning you heard the truth, which said the
21 government was trying to get Jason and John Galanis for a long
22 time. That's how this case got started. Devon Archer got
23 sucked up into it. There are no witnesses against him.

24 The witnesses that you did hear from -- this is slide
25 121 -- the government didn't even bother talking to them until

I6Q7GAL4

Summation - Mr. Schwartz

1 long after they brought this case. Ms. Moynihan -- the witness
2 we have been spending so much time with -- they didn't talk to
3 her until two months ago. Ms. Driever -- the one they said
4 supplies all of the reasonable doubts -- they didn't talk to
5 her until just after Thanksgiving in 2017. And that's true --
6 I won't go through them all -- that's true with so many of
7 their witnesses. Tim Anderson, it was a year and a half after
8 they brought this case. Even the victims, well into 2018.

9 The one guy that they did interview beforehand of
10 course was Francisco Martin, but he was lying, and he told you
11 that. He told you although he met them earlier, he didn't
12 decide to tell the truth until 2018. That's page 123. And I
13 will leave it to you to decide whether even now he is telling
14 the truth.

15 Look at also the decisions that the government has
16 made in pursuing this investigation. Look at who they have
17 made agreements with, who they've given immunity to. They gave
18 a cooperation agreement to Hugh Dunkerley, Hugh Dunkerley who
19 pled guilty to three counts of securities fraud, not only
20 relating to the Wakpamni Lake Community Corporation bonds, but
21 also that separate Ballybunion fraud, that misappropriation of
22 funds from Wealth Assurance AG, also to a bankruptcy fraud and
23 also to obstruction of justice. That's who they choose to make
24 the deal with. And, by the way, he committed another fraud
25 that I will talk about in a second that they didn't make him

I6Q7GAL4

Summation - Mr. Schwartz

1 plead guilty to.

2 And it's not just that he committed all of those
3 crimes but he obstructed justice; he produced faked documents
4 for the specific purpose of trying to con the government. And
5 that's the witness the government embraces, as they say Mr.
6 Archer was somehow involved in the cover-up? Based on what?
7 Based on an e-mail he receives but never replies to? Based on
8 what? A stray reference to Calvert, when he doesn't sign any
9 of the documents?

10 The reason why Dunkerley signs the Calvert documents,
11 while Devon Archer doesn't sign any of the documents, it's
12 because Devon Archer is not involved in the cover up. The
13 people that were involved in the cover-up signed the documents.
14 Devon Archer never did.

15 How about Francisco Martin? They gave him immunity.
16 He lied to them repeatedly, not just at the frappuccino
17 meeting, but over and over and over again he lied to them. It
18 wasn't until 2018, when he is safe in Spain where they can't
19 get him, that he decides to tell the truth but only if they'll
20 give him immunity and an all expense paid trip to New York.
21 And that's the immunity pursuant to which he testified before
22 you.

23 But that's not the only evidence that the government
24 put before you here that is problematic. The government put
25 evidence before you that was just plain misleading. I'm not

I6Q7GAL4

Summation - Mr. Schwartz

1 going to dwell on this, because I talked about it already, but
2 look at slide 128. Do you remember this chart of Agent
3 Kendall's? This was just egregiously misleading. The
4 government wanted you to believe that this \$903,000 -- which
5 was the interest payments on the second bond -- went through
6 Rosemont Seneca Bohai on its way to Burnham Securities and to
7 VL Assurance. That never happened. That was a mistake that
8 Morgan Stanley made. That money was adjusted in an internal
9 adjustment at Morgan Stanley. Agent Kendall admitted this.
10 Right?

11 And finally we showed her on slide 130 the way the
12 money really moved, and she said, yes, this one was accurate.
13 This one that doesn't have Rosemont Seneca Bohai on it at all
14 is the accurate one. That's not the one the government
15 offered. And, in fact, that was their choice.

16 Look at Agent Kendall's testimony on the next page.
17 "Q. We know that you created a version of your chart that
18 accurately did not reflect payments going from RSB, Rosemont
19 Seneca Bohai, to Burnham Securities or VL Assurance, correct?
20 "A. Yes."

21 So, she had done it the right way, and the government
22 chose to show you the misleading way, because that was the one
23 that had Devon Archer and Rosemont Seneca Bohai on it.

24 That wasn't the only time they did it. It wasn't just
25 Agent Kendall. Do you remember very, very early on when Hugh

I6Q7GAL4

Summation - Mr. Schwartz

1 Dunkerley was on the stand? The government showed him a chart.
2 This is slide 132. This was the government's chart, 4001. I
3 put up my own chart, Defense Exhibit 4063, and he said -- he
4 wasn't even answering my question by the way; he volunteered --
5 My chart is a more accurate one than the government's chart.
6 That's on slide 133.

7 We shouldn't be up here correcting the government's
8 mistakes. If they want you to convict Devon Archer, if they
9 want you to find guilt beyond a reasonable doubt, if they
10 expect you to draw conclusions where there is no evidence in
11 their favor, they have to put honest evidence in front of you.
12 And time, after time, after time, after time, that did not
13 happen in this case. It just didn't.

14 I said it before, but what we are doing here, what you
15 all are doing is incredibly serious. Guilty people should be
16 held responsible for their crimes, absolutely. But there is a
17 reason that the Constitution requires guilt beyond a reasonable
18 doubt. It is not enough that someone should have known better.
19 It's not enough that they were negligent. It's not enough they
20 were foolish. And the judge is going to tell you that
21 tomorrow, I expect.

22 And one thing that Ms. Mermelstein talked about was
23 this concept of conscious avoidance. Don't let that be a
24 substitute for proof. Conscious avoidance -- and the Judge
25 will give you instructions on this -- is a very, very specific

I6Q7GAL4

Summation - Mr. Schwartz

1 doctrine, and it says you can't bury your head in the sand; you
2 can't choose not to learn the facts and then say I didn't know
3 it.

4 That's not what happened here. There is no fact that
5 Devon Archer said, no, no, no, I don't need to see that I don't
6 want to know what's going on there, you just do it, I'm sure it
7 will work out fine. That's not what happened.

8 What happened was -- as we've shown you, and as I will
9 continue to show you -- Jason Galanis took affirmative steps to
10 keep the truth from Devon Archer. Being fooled is not
11 conscious avoidance. Right? And you should have known better
12 is not guilt.

13 Some other things that the government did that I think
14 are really problematic. Well, you know, in Ms. Mermelstein's
15 closing yesterday one of the things she did was she just
16 flashed evidence before you and said with a lot of confidence,
17 look, this shows guilt. Look at this one, slide 135. "Weasels
18 win." Ha, ha, ha, therefore it's a big fraud because they're
19 talking about themselves as fraudsters.

20 That's not what this is. Look at what the underlying
21 is. They're confirming that VL Assurance, the transaction is
22 closed. I don't know why Jason Galanis writes "Weasels gettin
23 shit done." I don't know who or what weasels is supposed to
24 be. But the government wants you to draw the inference from
25 this e-mail that they are acknowledging the fact that they're

I6Q7GAL4

Summation - Mr. Schwartz

1 fraudsters? That's ridiculous; that's fake evidence. Show us
2 the evidence -- we haven't seen it yet -- that Devon Archer
3 knew that this money was being stolen as opposed to mirrored
4 some silly language that Jason Galanis used in an e-mail.

5 The government made a lot of arguments that are simply
6 not supported by the evidence. Look at this chart. This is
7 the purchase of 260 West Broadway. That's the home that Jason
8 Galanis purchased in Manhattan. By the way, that's the one
9 that was purchased in the name of Archer Diversified TCG. The
10 government tried to make some hay with this, but they forgot
11 there is a stipulation Mr. Archer had nothing to do with Archer
12 Diversified TCG. Totally separate company; he never did
13 anything with Archer Diversified TCG. The only thing he ever
14 had to do with it was you saw one e-mail where Cliff Wolff sent
15 an e-mail to Seb Momtazi and said we're going to use Devon's
16 cachet.

17 All right. You know, fine, so Devon Archer might have
18 known -- if he paid attention to that e-mail -- that someone he
19 thought was a friend was going to use his name for something
20 that he thought was totally legitimate. He didn't know the
21 money was being stolen out of Valorlife. No one knew that
22 except for Jason Galanis and Hugh Dunkerley. We do that all
23 the time in our everyday life, use my name to get a
24 reservation; use my name when you're trying to get into that
25 club or an appointment with that doctor. That's all this is,

I6Q7GAL4

Summation - Mr. Schwartz

1 this is helping a friend. They're trying to turn that into
2 Devon Archer was therefore part of a conspiracy to steal
3 millions of dollars in bond proceeds. Make them show you real
4 evidence.

5 Here is another fake argument. Ms. Mermelstein said
6 on page 139 about this transaction: "Jason Galanis bought a
7 \$10 million apartment in Manhattan in Tribeca, and he did it
8 with proceeds from this scheme, and Devon Archer knew exactly
9 what he was doing and he helped him do it."

10 Well, that is quite a sentence. If Ms. Mermelstein
11 meant helped him do it in the sense that he had this knowledge
12 through a cc that the company that was going to buy the
13 apartment was going to be called Archer Diversified TCG, then
14 OK. But that's not what she wanted you to believe. She wanted
15 you to believe when she made this argument to you yesterday
16 that Devon Archer knew exactly that this money came out of this
17 scheme. And it didn't, by the way, it didn't come from this
18 scheme. When I referred a second ago to a totally separate
19 crime that Jason Galanis and Hugh Dunkerley committed, this is
20 that crime.

21 Look at slide 138. These are e-mails between folks at
22 Valorlife, and they're talking about a transfer confirmation
23 dated August 12, 2014. And if you look at the next page, it's
24 \$3.2 million from Valorlife to the Cliff Wolff Law Firm --
25 because that's what Jason Galanis does, he puts Cliff Wolff Law

I6Q7GAL4

Summation - Mr. Schwartz

1 Firm or some other law firm between his victim and Thorsdale,
2 just as he did with Devon -- and it says -- I'm sorry, I think
3 I said it was August before. It's December. This is the
4 European dating -- December 8, 2014 -- communications Valorlife
5 purchase of municipal bonds. Wakpamni Lake Community
6 Corporation.

7 Valorlife was fooled into thinking on December 8, 2014
8 that they were buying \$3.2 million of Wakpamni bonds.

9 Go back to slide 136, look at the bottom left hand:
10 \$3.2 million December 8, 2014. They never bought bonds.
11 That's another scheme that Jason Galanis and Hugh Dunkerley by
12 themselves used to loot Valorlife, the company that Devon was
13 trying to build, for their own benefit. Devon didn't know
14 anything about that. No one knew anything about that except
15 for Hugh Dunkerley and Jason Galanis. Hugh Dunkerley didn't
16 even have to take responsibility for that.

17 One more, page 141. The government showed you this
18 chart which showed \$250,000 from Mr. Archer to Wealth
19 Assurance, Wealth Assurance Private Client, that we now know
20 was ultimately used for two purposes. Some of it was used to
21 pay the coupon on the bond, and some of it -- in fact almost
22 precisely the amount that Mr. Archer put in -- was just
23 straight stolen by Jason Galanis. And Ms. Mermelstein argued
24 to you: "You know Archer understands exactly what that money
25 is for." She says this is part of the cover-up, Devon Archer

I6Q7GAL4

Summation - Mr. Schwartz

1 is covering this up by making interest payments on the bond.
2 That's Ms. Mermelstein's argument.

3 No evidence. Not a shred of evidence. There is
4 literally one document that's about that transaction, it's on
5 the next page, Government Exhibit 2121. It's just wire
6 instructions. And the government says because there are wire
7 instructions, therefore Archer understands exactly what that
8 money is for.

9 No evidence, just argument. Right? Argument is not
10 the same thing as evidence. And when you go back into the jury
11 room it's the evidence that you have to focus on. And time and
12 time again -- from the beginning of this case throughout the
13 presentation of the witnesses and the evidence, and through to
14 their arguments -- the government has presented to you false
15 evidence and evidence that was manipulated, to try to create
16 the impression that Mr. Archer was guilty and that he knew
17 things that there is no evidence to suggest that he did, and
18 that he touched transactions that there is no evidence to
19 suggest that he did.

20 I ask you, please, as I said at the very beginning,
21 keep your common sense about you and scrutinize the evidence.

22 What's the eighth reasonable doubt? The eighth
23 reasonable doubt is that the real conspirators were using Devon
24 Archer. The evidence is clear that Jason Galanis through his
25 friend Bevan Cooney brought Devon into this deal precisely to

I6Q7GAL4

Summation - Mr. Schwartz

1 exploit his connections and his money. What Devon was
2 interested in was the roll-up plan, the big financial service
3 conglomerate. All right?

4 We heard some testimony on slide 144 about Teneo, that
5 consulting company that was brought in precisely to advise on
6 the roll-up plan and bringing in a potential purchaser. Devon
7 brought Teneo in, he paid Teneo out of his pocket, and the
8 original Teneo slide deck was designed to pitch the project
9 towards Devon's connections.

10 I want to show you just briefly a few of the pages of
11 that to remind you. The deck, you should look at it, is 4733A.
12 This is an extensive footnoted appendixed slide presentation
13 put together by what everyone agrees are highly reputable
14 consultants.

15 If this business is a fraud, why would you do that?
16 Why would you subject yourself to that kind of scrutiny? It
17 doesn't make any sense. But Devon had no idea this was a
18 fraud. He believed in this roll-up plan. He believed that
19 they were creating this Guggenheim-like company that was going
20 to have all sorts of different businesses, insurance and asset
21 managers and broker dealers, and it was going to have billions
22 of dollars of assets under management. And, remember, that's
23 what they are always in search of, assets under management,
24 because that's how you make money; you are able to invest those
25 assets on behalf of your clients, and that's where you get your

I6Q7GAL4

Summation - Mr. Schwartz

1 fees.

2 So, whenever you see reference to assets under
3 management, that's the incentive here for Devon; that's how
4 they're going to make money. Increase assets under management,
5 make it a more profitable overall company, and then sell it for
6 more than the sum of its parts.

7 And everyone knew that Devon was a valuable resource.
8 Morgan Stanley knew it. You see that on slide 148. They were
9 hoping that he would bring in new assets, and his friends and
10 his business partners. The reason why Devon got brought into
11 this deal has nothing to do with fraud, has nothing to do with
12 Wakpamni bonds; it has to do with his connections to money and
13 to reputable people.

14 You see Exhibit 149 -- I'm sorry, page 149, Exhibit
15 4835 -- this is Jason Galanis -- Devon's not on this -- this is
16 Jason Galanis talking about the importance of a partnership
17 with Hunter Biden, Devon Archer and their partners at Harvest
18 Global. All right, that's the purpose. The purpose is to get
19 access to the billions or trillions of dollars in Chinese
20 money.

21 And you see that on the next page. This is Devon was
22 stellar at a fund with \$6 trillion of assets under management.

23 And constantly -- page 151 -- Jason Galanis -- who you
24 heard had somewhat of a checkered past; he had that civil SEC
25 settlement in his past -- he wanted to be able to put people

I6Q7GAL4

Summation - Mr. Schwartz

1 forward that were credible. So here he is saying "I added
2 Devon prominently to this presentation." And time and time
3 again he is providing information here to Francisco Martin
4 about Devon Archer and his connections.

5 Page 153 he is providing information to Dan McClory
6 and Hugh Dunkerley about Devon and his business partners Chris
7 Heinz and Hunter Biden.

8 Slide 154, Exhibit 800, providing that same
9 information to Michelle Morton and Richard Deary.

10 And Hugh Dunkerley told you that he wanted to take
11 advantage of Devon's connections. And the very best evidence
12 that you heard of that was the recording that we played for you
13 earlier this week. You heard Mr. Cooney saying -- Devon wasn't
14 there -- saying Devon Archer is the biggest whale of anyone.
15 And he is talking about all of his connections. You know what
16 a whale is, right? A whale is the high roller at the poker
17 table. The whale is the one whose money and connections are
18 exploited.

19 You see on the next page layers of legitimacy. That's
20 what Jason Galanis was searching for, layers of legitimacy.
21 And by bringing Devon Archer into the fold he was able to give
22 himself layers of legitimacy.

23 And you see him talking about that explicitly on slide
24 158. You remember this one, Defense Exhibit 4708: We have to
25 be careful with Devon. Let's use his friendship with Bevan.

I6Q7GAL4

Summation - Mr. Schwartz

1 Touch lightly. "The alternative is to pimp Devon and see how
2 quickly he stops responding. It will happen." That's not
3 someone who is in on the scheme; that's not a coconspirator;
4 that's someone who is being exploited for their connections and
5 their money.

6 Look, yesterday Ms. Mermelstein tried to tell you,
7 well, Devon Archer he would do some name dropping as well.
8 Look, first of all these are Mr. Archer's, his actual
9 relationships, but the only time you actually heard about him
10 invoking them in this entire trial is when he was asked about
11 them.

12 Look at slide 158. In every one of those minutes --
13 Mary Moynihan is the only one who tells you about this --
14 whenever Mr. Archer is talking about his relationship with
15 Hunter Biden and Chris Heinz it's always in response to
16 questions, in response to questions. Mr. Archer responded to
17 further questions. They wanted to know about this too, and one
18 of the reasons -- by the way, it was perfectly sensible -- was
19 because Hunter Biden was part of the Burnham team. You
20 remember that. You saw on that Teneo slide deck he was going
21 to be the vice chairman. You heard testimony that he was in
22 the office. Mary Moynihan from the BIT board told you they had
23 questions about his commissions and how much he was going to
24 bring in in terms of clients. He was part of this deal. It
25 was sensible to talk about him. But for the conspirators, for

I6Q7GAL4

Summation - Mr. Schwartz

1 Jason Galanis, Devon and his connection to power and to money
2 was irresistible; and that's what they used him for. It had
3 nothing to do with bonds.

4 If you go back, you'll see that Devon -- they were
5 talking about taking Devon's money and Devon's partners' money
6 long before there was an idea for bonds, back in 2013, 2014.

7 That's the eighth reasonable doubt: Mr. Archer was
8 being used; Devon was being used by his coconspirators.

9 What's the ninth reasonable doubt? This is an
10 important one. Motive.

11 Now, look, there is no requirement that the government
12 prove motive. I expect Judge Abrams will tell you that
13 tomorrow. It's not an element of the crime. But common sense
14 tells you people commit financial crimes to make money. Right?
15 And the government over and over again has told you that the
16 motive in this crime was supposedly to make money. The problem
17 is they have no coherent or common-sensical or reasonable
18 theory of motive for Devon Archer, and so they keep changing
19 their minds. OK?

20 First, this is what Ms. Tekeei said in her opening
21 statements: "Where did the money go, the bond money? \$15
22 million went to Devon Archer" Well, you know that's not true.
23 Their own witnesses told you that's not true. Their own
24 witnesses chart tells you he doesn't keep a penny of that
25 money; he doesn't benefit from those bonds being transferred.

I6Q7GAL4

Summation - Mr. Schwartz

1 Ms. Walch, the woman from FINRA, told you that when
2 those bonds were transferred Burnham was already at 1200
3 percent of its net capital. Didn't benefit a whit from it.

4 So the government abandons that theory, and then they
5 say, well, maybe he didn't get the \$15 million but he got cash.
6 Right? So at the end of the case they throw up their charts,
7 and their chart says Devon Archer, RSB got \$700,513. How did
8 we choose what is depicted on here? Of course the prosecutors
9 chose. And we went through this in painstaking detail. Devon
10 Archer, Rosemont Seneca Bohai, they didn't keep a penny of that
11 money. The \$100,000 was repayment of a loan. And Agent
12 Kendall tells you it doesn't end up at Rosemont Seneca Bohai.

13 The \$600,513, we talked about that before, that goes
14 to Thorsdale to buy it out of CORFA. That doesn't end up at
15 Rosemont Seneca Bohai. None of that money stays with Rosemont
16 Seneca Bohai. And, in fact, you remember Agent Kendall has to
17 admit at the end of the day that she has double counted where
18 the money went, because this money that had returned from
19 Rosemont Seneca Bohai was counted elsewhere in her chart. You
20 see that testimony on page 167. This is another instance where
21 they presented false evidence to you.

22 So, we showed you slide 170. Well, we talked about
23 that. Slide 170, this was Mr. Fliegler's chart, that when you
24 look at the cash -- even, by the way, when we picked up a
25 \$100,000 wire going from Thorsdale to Mr. Archer that the

I6Q7GAL4

Summation - Mr. Schwartz

1 government didn't pick up and that has nothing to do with the
2 bonds but we were trying to be conservative and give you a full
3 picture of the transactions between these entities -- Mr.
4 Archer suffered a net loss of \$826,142.36, just like I told you
5 a month ago in opening statement. He didn't get any \$15
6 million; he lost almost a million dollars. It's the net loss
7 in the transactions between these entities.

8 So, finally yesterday, on the last day of the case,
9 the government came up with a brand new theory of motive, and
10 they said, well, Mr. Fliegler, if some of this money went to go
11 invest in securities and those securities had value, those
12 aren't counted in your chart, right? He said right.

13 First things first, none of this money went to
14 securities, none of it did, and they haven't shown you
15 otherwise. They showed you some securities, but we know where
16 those came from. None of this money went to securities. On a
17 cash basis, looking at these entities, Mr. Archer experienced a
18 net loss of \$826,142.36. He was putting money into these
19 entities because he was trying to make his business a success.
20 OK?

21 So yesterday the government decided that the motive
22 was now to increase the value of Wealth Assurance Holdings
23 shares, and they show you that at some seemingly random period
24 in time Mr. Archer had 130,000 Wealth Assurance Holdings shares
25 that were worth \$4.5 million, and that they say is the motive.

I6Q7GAL4

Summation - Mr. Schwartz

1 Yes, they're right, that's the motive. That was the
2 motive all along. Mr. Archer's motive was to make Wealth
3 Assurance Holdings, Valor Group, this big financial
4 conglomerate, a huge success. Who told you about these shares
5 first? I did on cross-examination of Hugh Dunkerley. The
6 government didn't bring this out. I brought this out.

7 It was Hugh Dunkerley who signed this and issues to
8 Mr. Archer 130,000 Class B nonvoting shares of Wealth Assurance
9 Holdings. Right?

10 If you go back up to the previous slide, 171, and you
11 see under quantity 130,000 shares, those are the shares that
12 Mr. Archer is holding. That was his motive; that's why he was
13 in this deal.

14 But slide 173, when did he get them? April 2014,
15 before there were bonds. That has nothing to do with the
16 bonds. Right? Hugh Dunkerley told you this was compensation
17 to Mr. Archer for agreeing to serve on the board of directors
18 of Wealth Assurance Holdings which became Valor Group; and he
19 told you that happens, and that's done to align the incentives
20 of directors and shareholders, to make sure everyone has the
21 same goal, which is to make a company stronger. And you heard
22 that not just from Mr. Dunkerley; you heard that from
23 Commissioner Atkins on page 176. The point of this is so if
24 the shareholders feel the pain, the directors feel the pain
25 too; it aligns interests.

I6Q7GAL4

Summation - Mr. Schwartz

1 This plan, this roll-up plan, this Wealth Assurance
2 Holdings plan, this goes back to November 2013. Go to slide
3 174, please. This is what you see, a memorandum from Wealth
4 Assurance Holdings dated November 9, 2013, talking about Jason
5 Sugarman, Hugh Dunkerley, Devon Archer, David Ezekiel and Adam
6 Fisher being appointed to the board of directors. There were
7 no bonds. This was months and months before that meeting in
8 Las Vegas between Tim Anderson and John Galanis and Raycen
9 Raines and Steven Haynes. This was long before any of that
10 stuff. That's when Mr. Archer gets these shares.

11 And let's think about that for a second. If Mr.
12 Archer's motive, according to the government, is now these
13 shares in Wealth Assurance Holdings, that's the long-term
14 investment. That's investing in the health of this financial
15 services conglomerate. Does it make any sense that he would
16 also participate in a fraud at the heart of it? Does it make
17 any sense that he would participate in this bond fraud where he
18 doesn't get any of the money out of the bond fraud? But does
19 it even make sense that he would participate and ruin the
20 company he is helping to create?

21 And it's not just this. Remember Jason Galanis and
22 Hugh Dunkerley, the really bad guys in this story, they are
23 absolutely plundering these companies. It's not just the bond
24 money, it's Ballybunion. Remember that's money they just suck
25 out of Wealth Assurance.

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Summation - Mr. Schwartz

1 And it is that money that goes to Jason Galanis'
2 apartment they suck out of Valor Life, totally separate crimes,
3 totally separate embezzlements. Mr. Dunkerley had to plead
4 guilty to a separate crime, the one the government realized
5 about Valor Life. It doesn't make any sense that Devon was a
6 co-conspirator if his motive was the long term health of this
7 company and everyone else is just pillaging. That is like two
8 guys going to a bank and going to rob the bank vault. One guy
9 takes all the cash and the other guy gets stock in the bank,
10 and the next day they rob it some more and still one guy takes
11 all the cash. It doesn't make any sense, right?

12 Use your common sense. That is what they ask you to
13 do. Their theory of motive, the theory of why someone who had
14 everything to lose would participate in this fraud makes
15 absolutely, absolutely no sense. That was the 9th reasonable
16 doubt, no motive.

17 What is the 10th and final reasonable doubt here?

18 The final reason that you know Devon is not guilty is
19 because there is no actual evidence that Devon knew that Jason
20 Galanis was stealing the money. It couldn't get simpler than
21 that.

22 I am going to go through that in a second, but I do
23 want to talk -- I alluded to this before, but I am going to
24 talk about what is going to happen next. I am going to sit
25 down in just a few minutes, and given the time, hopefully we'll

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Summation - Mr. Schwartz

1 all go home and we'll start again in the morning. Ms. Notari
2 will speak and the government will speak again.

3 When the government does that, as I said before,
4 they're going to make some excellent arguments, lots of
5 excellent arguments, but they're going to be arguments, right?
6 Whoever it is is going to go home tonight and they're going to
7 study this transcript that is being prepared, they're going to
8 study this transcript of everything that I have said and
9 they're going to try to poke holes in every single thing.

10 Look, we're lawyers, and we get paid to argue. We're
11 all good lawyers, the government is excellent lawyers and
12 they're going to have responses. I won't have an opportunity,
13 and none of the defense lawyers will have an opportunity to
14 speak to you again. It is the rule in federal criminal cases,
15 the government gets the last word. That is how it should be.
16 They have an enormous burden, a burden of proof beyond a
17 reasonable doubt, so it is totally appropriate that they get
18 the last word.

19 I am going to ask you to continue to scrutinize
20 whoever it is that gives that argument and try to recognize the
21 difference between arguments and evidence because there is no
22 actual evidence that Devon Archer knew that Jason Galanis was
23 stealing the bond money. There is argument, and you heard that
24 from Ms. Mermelstein yesterday. She showed you a number of
25 emails, and they had some words in them like discretionary and

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Summation - Mr. Schwartz

1 liquidity, and she put them up and said with a tremendous
2 amount of confidence that Devon Archer knew what this means,
3 this shows that he knew the money was being stolen, but that is
4 simply not so.

5 Let's look at some of those. Slide 180. You heard
6 over and over in this trial about the desire to get
7 discretionary liquidity, discretionary assets under management.
8 We talked about that concept. They want you to believe that is
9 somehow a code word for stealing the money. Discretionary
10 money, discretionary investments, assets under management is
11 not code for stealing the money.

12 When you see that email from Jason Galanis that has an
13 opinion letter from Dilworth Paxson, Tim Anderson's law firm
14 attached to it that said the proceeds are \$5 million to the
15 WLCC to build a winery and \$15 million to us discretionary,
16 that doesn't mean discretionary, we can put it in our pockets.
17 That means it is discretionary assets under management. This
18 is money that we can potentially use in order to make
19 investments and earn real fees.

20 You see some other emails, I won't show you all of
21 them, where Jason Galanis at one point says I don't want you to
22 bring me any more deals until we can pull the trigger
23 ourselves. What is he saying? He is saying we have to have
24 enough assets under management so we're not bringing in outside
25 investors and working for them for fees. We're investing our

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Summation - Mr. Schwartz

1 own, not our stolen, but our clients' assets under management.
2 That is what those communications mean.

3 They showed you a whole bunch of emails in this case,
4 and the only one who told you what they meant is the
5 government. That is not evidence. That is argument. All of
6 those emails between Jason Galanis and Devon, you only have
7 what is written on the page, which I assure you does not make
8 any reference to stealing bond money. I guarantee you if there
9 were any such an email, you would have seen it by now. There
10 is no such thing.

11 There is reference to discretionary, and you heard,
12 Slide 181, discretionary. It means the investment manager has
13 discretion to invest within guidelines. That's one of the
14 victims, Leo Griffin. Their own expert, Professor Laby, talked
15 about discretion. There are certain circumstances where a
16 client can hand over responsibility of what is called
17 discretion to an investment adviser. That is what discretion
18 means in this context.

19 Slide 182, Exhibit 2120, this is the email I was
20 talking about a second ago. This doesn't mean we get to steal
21 the \$15 million. It means it is discretionary assets. We can
22 invest it. We can earn a higher return on it. This is how
23 we're going to make money, not I'm going to put it in my pocket
24 and not share any of it with you guys, which is how the
25 government wants you to read it. That is what they have.

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Summation - Mr. Schwartz

1 Yesterday the government showed you email after email
2 after email after email that had buzzwords in it, but none of
3 them were proof, and certainly no proof provided you any proof
4 whatsoever that Devon Archer knew that money was stolen. All
5 they have are these words. I just told you what I think the
6 words mean. Ms. Mermelstein told you what she thinks the words
7 mean. I don't think it is possible that you could not have a
8 reasonable doubt about what the words mean.

9 When the government in their rebuttal gets up and says
10 with absolute confidence that I'm wrong and they're right,
11 don't let their confidence be a substitute for proof.
12 Sometimes this happens to us, all of us in our everyday life.
13 We can be absolutely confident about something and still be
14 wrong.

15 When this trial started, there was this meme going
16 around on the internet, I don't know if you all have seen it,
17 but it really speaks to this point. Yanni versus Laurel. Do
18 you know what goes on with this one? Some of you do. Can you
19 play that, Mr. --

20 MS. MERMELSTEIN: Objection, your Honor.

21 THE COURT: This is not really relevant.

22 MR. SCHWARTZ: It absolutely is relevant. It is a
23 demonstrative aid to the jury.

24 THE COURT: I don't think so.

25 MR. SCHWARTZ: For those of you who have seen it, what

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Summation - Mr. Schwartz

1 the name was, was someone pronouncing that word, and half the
2 people who heard it were absolutely certain the word was
3 Laurel, and half the people who heard it were absolutely
4 certain that the word was Yanni, and absolutely certain and yet
5 filled with doubt. That is what the evidence in this case is.
6 The evidence that the government has asked you to accept as
7 proof beyond a reasonable doubt in the best possible world, it
8 is totally ambiguous. No one has told you what it meant.

9 Look, I have gone through today and I hope in the
10 course of walking through these 10 reasonable doubts, I have
11 not given you doubt, but I have given you certainty that Devon
12 Archer is not guilty, that he is innocent, but that is not my
13 burden. That is why the government has the burden in criminal
14 cases of proof beyond a reasonable doubt, beyond each and every
15 reasonable doubt.

16 So I am going to sit down in just a moment, and before
17 I do, I want to make the same request I made before and I've
18 made a few times, which is that you exercise your own common
19 sense when you scrutinize the evidence closely just as you have
20 every single day while we have been here at trial.

21 I remember vividly that one of the very first
22 witnesses, it may have been Mr. Anderson, it may have been Ms.
23 Driever, I was asking a question, and I showed the witness a
24 document, and there was something kind of funny the way the
25 emails had been produced, and in some of the intermediate

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Summation - Mr. Schwartz

1 emails the headers were not totally complete, and you all spoke
2 and you said hey, I think we're missing a page, I think we're
3 missing some information.

4 I had to show you, I had to prove to you that it was
5 full, complete and accurate, a single email. I had to show you
6 the production numbers. I had to show you there were other
7 emails in the chain from the same person that had the same sort
8 of error.

9 You required a month ago, you absolutely required that
10 precision, that attention to detail. That wasn't our argument.
11 That was you requiring absolute accuracy, and I have asked
12 several witnesses in this trial, and the government keeps
13 objecting, but I keep getting the same answer. Accuracy
14 matters. What we're doing requires, if you're to convict
15 anyone in this case, a tremendous deal of accuracy, proof
16 beyond a reasonable doubt, proof beyond each and every doubt
17 that has a basis in reason or evidence or the lack of evidence.

18 As you go back into the jury room to deliberate, think
19 back on the actual evidence, the witnesses and the documents
20 and the stipulations, none of which will show that Devon
21 understood that Jason Galanis was stealing millions upon
22 millions of dollars, and that's the only question that matters.

23 If you focus on the evidence as it relates to that
24 question, did Devon know, not what do we know now, did Devon
25 know then, you will reach the right verdict, the verdict that

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Summation - Mr. Schwartz

1 is consistent with the facts and the law, a verdict of not
2 guilty.

3 You all hold a man's life, family in your hands. Next
4 week is July 4th. It is Felix Archer's birthday. The evidence
5 you have heard over the last month demonstrates that Devon
6 Archer is innocent. The evidence overwhelmingly shows,
7 overwhelmingly shows that Devon Archer was misled and that he
8 had no clue that Jason Galanis was stealing money, that Jason
9 Galanis was trying to rip down the business, plunder it for his
10 own personal gain that Devon was trying to build up by putting
11 his own money into it.

12 So on behalf of Mr. Archer, I ask you to return the
13 right verdict, the verdict that is consistent with the facts
14 and the law. I ask you to return a verdict of not guilty, and
15 I want to thank you very sincerely for your time and attention.

16 THE COURT: Thank you, Mr. Schwartz.

17 Ladies and gentlemen, we are going to adjourn for the
18 night. Please remember still don't discuss the case. Don't
19 research anything. I will see you tomorrow morning at 9:00,
20 and have a nice evening.

21 (Jury excused)

22 THE COURT: Everyone can be seated. I am going to
23 distribute a red-lined version of the charge tonight. We can
24 talk about it tomorrow. If the jury is here late, we'll talk
25 about it at 9:00. If not, we'll talk about it between

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Summation - Mr. Schwartz

1 Ms. Notari's summation and the government's rebuttal.

2 If there is anything else you want to be heard on, I
3 will hear you now.

4 MR. QUIGLEY: Your Honor, we'll take a short break
5 after her speech?

6 THE COURT: Yes, we'll take a short break after hers,
7 and you will go, and we'll take another break depending on what
8 time it is, we'll take a lunch break or short break, and I will
9 start the charge and see what time it is. If there are any
10 other charge issues you want to raise with me? I don't think
11 so. Okay.

12 MR. QUIGLEY: Not for the government, your Honor.

13 THE COURT: Thanks, everyone. Have a night nice
14 night.

15 (Court adjourned until Wednesday, June 27, 2018, at
16 9:00 o'clock am)

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Summation - Mr. Schwartz

GOVERNMENT EXHIBITS

Exhibit No.	Received
45063829